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IN THE

Supreme Court of the United States

OCTOBER TERM, 1996

MAX PIEVSKY,

Petitioner,

v.

THOMAS J. RIDGE,
in his capacity as the Governor of the
Commonwealth of Pennsylvania,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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91PP

QUESTION PRESENTED

1. Under federal law, may a government official appointed for a fixed term of years be removed prior to the end of his term solely at the will of the appointing authority?

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ON PETITION FOR A WRIT OF CERTIORARI
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Petitioner, Max Pievsky, respectfully petitions this Court to issue a writ of certiorari to review the October 16, 1996 judgment of the United States Court of Appeals for the Third Circuit, affirming a judgment of the United States District Court for the Middle District of Pennsylvania that Petitioner could be removed from his position as a Commissioner of the Delaware River Port Authority prior to the expiration of Petitioner's five-year term of office, solely at the will of Respondent, the Governor of Pennsylvania.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Third Circuit is published as *Pievsky v. Ridge*, 98 F.3d 730 (3d Cir. 1996) and is reprinted in the appendix attached hereto ("Appendix") at 1a.[1] The district court's opinion and order granting judgment in favor of respondent is published at *Pievsky v. Ridge*, 921 F.Supp. 1335 (M.D. Pa. 1996) and is reprinted in the Appendix hereto at 17a.

JURISDICTION

The Court of Appeals issued its opinion on October 16, 1996. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTES INVOLVED

The Compact Clause of the Constitution of the United States, U.S. Const., Article I, § 10, Cl. 3, provides in pertinent part that "[n]o State shall, without the Consent of Congress, . . . enter into any Agreement or Compact with another State. . . ."

The relevant provisions of the Delaware River Port Authority Compact ("DRPA Compact"), as amended, an interstate compact between the Commonwealth of Pennsylvania and the State of New Jersey, involve the procedures for appointing Commissioners to the Port Authority by the Commonwealth of Pennsylvania:

> Six of the eight commissioners for the Commonwealth of Pennsylvania shall be appointed by the Governor of Pennsylvania for terms of five years. The Auditor General and the State Treasurer of said Commonwealth shall, ex-officio, be commissioners for said Commonwealth, each having the privilege of appointing a representative to serve in his place at any meeting of the commission which he does not attend personally.

DRPA Compact, Article II, 36 P.S. § 3503. The full text of the DRPA Compact is set forth at 36 P.S. § 3503 and is reprinted in the Appendix hereto at 33a.

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1. "_a" refers to the Appendix attached to this Petition.

STATEMENT OF THE CASE

This case presents no issue of disputed facts; the only issue is one of legislative intent. The findings of the court below adequately and fully state the pertinent facts. Appendix at 2a-4a. The facts, which were stipulated to between the parties, may be summarized as follows.

The Delaware River Port Authority ("DRPA") was created pursuant to the authority conferred by Delaware River Port Authority Compact ("DRPA Compact"), an interstate compact between the Commonwealth of Pennsylvania and the State of New Jersey. The DRPA Compact was agreed to in 1931 and, as required in the Compact Clause of the Constitution of the United States, U.S. Const., Art. I, § 10, Cl. 3, was approved in 1932 by the United States Congress. Act of June 14, 1932, ch. 258, 47 Stat. 308. Congress consented to the most recent amendments to the DRPA Compact by Act of Oct. 27, 1992, P.L. 102-544, 106 Stat. 3576. The DRPA was created as a "public corporate instrumentality of the Commonwealth of Pennsylvania and the State of New Jersey" to effectuate the development and improvement of the Delaware River and Port District. DRPA Compact, Article I, 36 P.S. § 3503. The DRPA was created, among other things, to construct and operate bridges across the Delaware River, to construct and maintain facilities for the transportation of passengers between Pennsylvania and New Jersey, and to improve and develop the ports of Philadelphia and Camden. *Id.*

The DRPA has sixteen (16) commissioners, eight (8) of whom are appointed from Pennsylvania and eight (8) of whom are appointed from New Jersey. The DRPA Compact, codified in Pennsylvania at 36 P.S. § 3503, establishes the procedures for the appointment of the eight commissioners from Pennsylvania as follows:

> Six of the eight commissioners for the Commonwealth of Pennsylvania shall be appointed by the Governor of Pennsylvania for terms of five years. The Auditor General and the State Treasurer of said Commonwealth shall, ex-officio, be commissioners for said Commonwealth, each having the privilege of appointing a representative

> to serve in his place at any meeting of the commission which he does not attend personally.

DRPA Compact, Article II, 36 P.S. § 3503. The DRPA Compact provides further that:

> All commissioners shall continue to hold office after the expiration of the terms for which they are appointed or elected until their respective successors are appointed and qualify, but no period during which any commissioner shall hold over shall be deemed to be an extension of his term of office for the purpose of computing the date on which his successor's term expires.

Id.

Plaintiff was appointed initially as a Commissioner of the DRPA from October 4, 1989 until October 4, 1994 by then-Governor Casey of Pennsylvania. He was reappointed to a five-year term on December 28, 1994. Pursuant to that appointment, Mr. Pievsky was to serve a five year term through 1999. There is no provision in the DRPA Compact providing the Governor with any right to remove Mr. Pievsky from office prior to the expiration of his five-year term in 1999.

On January 23, 1996, Mr. Pievsky brought suit against respondent Governor Thomas J. Ridge (the "Governor") in the Commonwealth Court of Pennsylvania seeking to enjoin the Governor from carrying out a threat made on January 22, 1996, to remove Mr. Pievsky from his position as a DRPA Commissioner. The Governor removed that suit to federal court on January 24, 1996.

On April 12, 1996, the district court issued an order and supporting memorandum granting judgment to the Governor and holding that "federal law dictates that Defendant may remove Plaintiff [as a DRPA Commissioner] prior to the expiration of his term in 1999" ("April 12 Order"). Appendix at 31a.

Plaintiff immediately filed a notice of appeal and a motion seeking a stay of the April 12 Order pending appeal. Upon Mr. Pievsky's motion, the district court granted an

injunction in which it prohibited the Governor from removing Mr. Pievsky as a DRPA Commissioner pending resolution of an appeal to the United States Court of Appeals for the Third Circuit. On April 15, 1996, the district court issued a memorandum explaining its stay decision. On April 16, 1996, the United States Court of Appeals for the Third Circuit vacated the district court's grant of a stay pending appeal and Mr. Pievsky was removed by the Governor as a DRPA Commissioner. On April 18, 1996, Justice Souter, sitting as Circuit Justice, denied Mr. Pievsky's Application for Stay.

On October 16, 1996, the Court of Appeals affirmed the district court's decision allowing the Governor to remove Mr. Pievsky as a DRPA Commissioner prior to the expiration of Mr. Pievsky's fixed, five-year term. The Court of Appeals reasoned that

> [t]he long-standing rule in the context of federal appointments is that "[i]n the absence of specific provision to the contrary, the power of removal from office is incident to the power of appointment."

Appendix at 6a (quoting *Keim v. United States*, 177 U.S. 290, 293 (1900)). The Court of Appeals then concluded that

> [s]ince the power to removal is incident to the power to appoint, we hold that under the terms of the Compact the Governor of Pennsylvania has the authority to remove a DRPA Commissioner at will.

Appendix at 6a-7a. The Court of Appeals rejected an argument by Petitioner that, under this Court's precedent, beginning with *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803), a fixed term with no provision for removal cannot be interpreted to permit removal at will. Appendix at 7a. Instead, the Court of Appeals relied upon a wholly distinguishable decision of this Court and opined that

> [i]t is a long-standing rule in the federal courts that a fixed term merely provides a time for the term to end. The fixed term is merely a "cap" with the appointee removable at will. *Parsons v. United States*, 167 U.S. 324, 17 S.Ct. 880, 42 L.Ed. 185 (1897).

Appendix at 7a. In support of its decision, the Court of Appeals concluded that as a matter of policy

> the Governor's inability to remove DRPA Commissioners prior to the expiration of their terms would impede his ability to carry out his functions as Chief Executive of the Commonwealth of Pennsylvania.

Appendix at 13a.[2]

REASONS FOR GRANTING THE WRIT

The petition should be granted to resolve a conflict among the decisions of this Court. In *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803), Chief Justice Marshall held that an appointment for a fixed term of years does not allow the appointee to be removed (absent some showing of cause) prior to the expiration of the fixed term. Since the landmark decision in *Marbury*, this Court has reaffirmed that decision many times, but also has issued opinions such as *Parsons v. United States*, 187 U.S. 324 (1897) and *Myers v. United States*, 272 U.S. 52 (1926), which arguably support the Court of Appeals' conclusion that a "fixed term is merely a 'cap' with the appointee removable at will." Now, as we approach the 200th anniversary of the *Marbury* opinion, this Court is presented in this petition with the opportunity to finally resolve, under federal law, the meaning of a legislative enactment of a fixed term of office without the complications of the separations of power issues that were at the heart of *Myers* and which influenced the outcome of *Parsons*.

Not only is the issue presented here of historical importance, it is of current significance because there are a number of appointments to a variety of federal agencies and Compact

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2. This conclusion by the Court of Appeals, which suggests that limits upon the Governor's removable power would be impermissible, is in sharp contrast to its finding that "[w]e agree with Pievsky's contention that the Compact is in the nature of federal law, and, under the Supremacy Clause of the U.S. Constitution, *could* limit the Governor's ability to remove his appointed officials." Appendix at 14a (emphasis in original). The Court of Appeals does not fully reconcile its apparently contradictory pronouncements regarding the scope of the Governor's removal authority vis-a-vis DRPA Commissioners.

Clause entities that provide for fixed terms, but are silent on the subject of removal. *See* Appendix at 67a (listing federal statutes and Interstate Compacts where appointees serve a fixed term, but the governing legislation is silent as to removal). In all such cases, there is, at present, uncertainty as to whether these appointees are removable at the whim of the appointing authority, or are secure in their offices for the term for which they were appointed.

THIS PETITION PRESENTS AN IMPORTANT ISSUE OF FEDERAL LAW WHERE AN APPARENT CONFLICT EXISTS IN THIS COURT'S DECISIONS

The principle that when a legislative body establishes a fixed term of office, the office holder is not removable at the will of the appointing authority, dates back at least to this Court's decision in *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803). In *Marbury*, the Congress adopted a statute permitting the President, with the advice and consent of the Senate, to appoint justices of the peace for the District of Columbia. Such appointees, once confirmed, were "to continue in office for five years." *Id.* at 154. After the Secretary of State refused to deliver to certain duly appointed and confirmed justices their commissions of office (they had been appointed by a prior President), an action for *mandamus* was brought. The Supreme found that

> as the law creating the office gave the officer a right to hold for five years independent of the executive, the appointment was not revocable; but vested in the officer legal rights which are protected by the laws of his country.

Id. at 162. Thus, this Court concluded that, if it had jurisdiction, the issuance of *mandamus* would be proper. This Court then reached its landmark decision establishing the principle of judicial review when it found that an Act of Congress providing this Court with original jurisdiction over *mandamus* actions violated the Constitution.

The principle that a fixed term evinces a legislative intent not to permit an office holder to be removed at will was reaf-

firmed in *In re Hennen*, 38 U.S. (13 Pet.) 230 (1839), a decision that generally is cited for the proposition that the power of removal is incident to the power of appointment. The Supreme Court held that a district court judge could remove at will a clerk for whom no tenure of office was specified, since the district court judge had appointed the clerk. The Court suggested, however, that the rule would be different if the clerk had been appointed to a term fixed by statute:

> All offices, the tenure of which is ***not fixed by the Constitution or limited by law,*** must be held either during good behaviour, or (which is the same thing in contemplation of law) during the life of the incumbent; or must be held at the will and discretion of some department of the government and subject to removal at pleasure.

In re Hennen, 38 U.S. (13 Pet.) at 259 (emphasis added).

This Court has continued to adhere to the view that officeholders with fixed terms were not subject to the maxim that the power of removal was incident to the power of appointment. In *Reagan v. United States*, 182 U.S. 419 (1901), this Court addressed whether the United States District Court for the Indian Territory could remove a commissioner for the Indian Territory who was appointed for an unspecified period. This Court concluded that such commissioners are "inferior officers, *not holding their offices for life or by any fixed tenure,* and they fall within the settled rule that the power of removal is incident to the power of appointment." *Id.* at 424 (emphasis added). In *Shurtleff v. United States*, 189 U.S. 311, 314 (1903), this Court again addressed a situation where no specific term was established. In that case, no specified term was set for the office of general appraiser, although there was language specifying causes for which an appraiser could be removed. This Court found that there was not sufficient intent expressed by Congress that an appraiser have, effectively, a life tenure, and concluded that removal at will was possible. This Court reiterated, however that "where causes of removal are specified by constitution or statute, as also where the term of office is for a fixed period, notice and hearing [prior to removal] are essential."

More recently, in two cases dealing with presidential removal authority, this Court reiterated the significance of fixed terms in deciding whether the Congress intended, and had the power, to limit the President's removal authority.[3] In *Humphrey's Executor v. United States,* 295 U.S. 602 (1935), this Court reviewed President Roosevelt's attempt to remove a member of the Federal Trade Commission ("FTC"). FTC Commissioners were appointed for fixed terms and could be removed for "inefficiency, neglect of duty or malfeasance in office." *Id.* at 622. This Court concluded that "the fixing of a definite term subject to removal for cause . . . is enough to establish the legislative intent that the term is not to be curtailed in the absence of such cause." *Id.* at 623.[4]

This Court next addressed the issue of the presidential removal power in *Wiener v. United States,* 357 U.S. 349 (1958), which involved appointments for fixed terms, but without any provision governing removal. *Wiener* involved the War Claims Commission ("WCC"), a body responsible for making final determinations regarding awards for damage caused by the World War II enemies. Congress, in creating the WCC, limited its life to three years, but did not provide for any method of removal. As in *Humphrey's Executor,* this Court looked to both the legislation and the role of the commission as independent from the Executive to determine that Congress had the power to limit removal. *Wiener,* 357 U.S. at 356. This Court then analyzed whether Congress intended that the President have removal power and found that "no such [removal power] . . . is impliedly conferred upon [the President] simply because Congress said nothing about it." Thus, *Wiener* stands squarely for the proposition that where a legis-

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3. Despite the somewhat ambiguous language utilized by the Court of Appeals, *see supra* note 2, the instant case does not appear to present the issue of whether Congress, when it adopted the DRPA Compact, had the power to limit the removal authority of the Governor of Pennsylvania.

4. This Court then addressed a claim that Congress could not limit the President's removal power and concluded that the independent character of the FTC permitted the Congress to enact such a limitation. Based upon these findings, this Court concluded that FTC Commissioners could not be removed during their term of office except for cause. *Id.* at 632.

lative body establishes a fixed term of office, and is silent as to removal, a power of removal is not thereby implied.

Against this long line of precedent, stand two decisions of this Court upon which the Court of Appeals relied in concluding that Mr. Pievsky could be removed at the will of the Governor of Pennsylvania. The Court of Appeals' conclusion that a "fixed term is merely a 'cap' with the appointee removable at will", a conclusion directly contrary to the line of cases described above, relies upon this Court's decision in *Parsons v. United States,* 187 U.S. 324 (1897). *See also Myers v. United States,* 272 U.S. 52 (1926). In *Parsons,* this Court interpreted a series of statutes restricting Presidential removal power dating from the end of the Civil War. At the heart of the *Parsons* decision was the effect of the repeal of the Tenure of Office Act of 1867, which was passed in the aftermath of the Civil War to limit President Johnson's ability to implement his policy of conciliation with the states of the former Confederacy. The Act prohibited the President from removing a person holding civil office without the advice and consent of the Senate. President Johnson's unwillingness to abide by the terms of the Act, based upon his view that it was unconstitutional, led to his impeachment and trial before the Senate. In 1869, after the election of President Grant, the Act was modified to apply only to those persons appointed with the advice and consent of the Senate (as opposed to all civil officials). In 1887, the Tenure of Office Act was repealed.

Before this Court, Parsons, who was appointed as a U.S. Attorney for a term of four years, argued that he could not be removed during his term of office for any reason, while the president argued that the goal of the repeal of the Tenure of Office Act was to enlarge the president's removal authority. This Court found that the term of office set forth in the statute under which Parsons was appointed was a limitation on the period he would serve, not a grant of tenure. *Parsons,* 187 U.S. at 342. This Court based its decision upon the president's argument that the repeal of the Tenure of Office Act was intended to give the president more power, not less power, to remove certain officials:

> we are satisfied that [Congress's] intention, in the repeal of the tenure of office sections of the Revised Statutes, was again taken to concede to the president the power of removal, if taken from him by the original tenure of office act, and by reason of the repeal to thereby enable him to remove an officer when, in his discretion, he regards it for the public good, although the term of office may have been limited by the words of the statute creating the office.

Parsons, 187 U.S. at 342-43. Thus, while *Parsons*, because of the special facts underlying the decision, does not necessarily stand for a general statement that fixed terms can be ignored, it can be interpreted in that fashion as did the Court of Appeals below.

Subsequently, in *Myers v. United States*, 272 U.S. 52 (1926), this Court addressed the Constitutionality of a provision that permitted postmasters, appointed with the advice and consent of the Senate, to be removed only with the advice and consent of the Senate. This Court found that as to purely executive officials (such as a postmaster), such a limitation on the president's removal authority was unconstitutional. In reaching that decision, the Court concluded, in dictum, that the language in *Marbury* regarding the sanctity of a fixed term was "obiter dictum" and if this "language was more than a dictum and a decision, then the Parson's Case overrules it." *Myers*, 272 U.S. at 142-43.[5]

In sum, given the conflicting language in this Court's previous decisions regarding the effect of a grant of a fixed term of office, this petition provides this Court with the opportunity to resolve the issue free of the separations of powers concerns that have complicated this Court's jurisprudence in this area. *Marbury, Hennen, Reagan, Shurtleff, Humphrey's Executor*

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5. The separate opinion of Justice McReynolds, *Myers*, 272 U.S. at 215-22, vigorously challenges the majority's conclusion that *Marbury's* holding regarding fixed terms is dictum or that that holding was overruled, as does the dissent of Justice Brandeis. *Id.* at 242-43. Justice Hughes agreed with the conclusions of both Justice McReynolds and Justice Brandeis. *Id.* at 177.

and *Wiener* all hold or state that Congress, by fixing a term of years, does mean to limit the removal power of the appointing authority. On the other hand, *Parsons, Myers* and the Court of Appeals below all reach the contrary conclusion.

The Court of Appeals' decision is particularly in need of review by this Court because of its significant impact upon the independence of interstate compact entities such as the DRPA. This Court has specifically determined that interstate compact entities such as the DRPA are tripartite arrangments between at least two States and the Congress, and thus are not tied to one particular state.[6] This Court should not permit *Parsons,* a result-oriented decision from a century ago, to eliminate the independence of interstate compact entities and render such entities nothing more than vassals of the Governors of the member states.

The inconsistency in this Court's decisions, outlined above, is not merely of academic interest, or of interst only to the DRPA, but presents a substantial and important federal question. Set forth in the Appendix at 67a, is a list of seventy-two federal statutes and interstate compacts in which the Congress enacted and/or approved of terms for officials in which a specific term is set forth and the provision at issue is silent on the question of removal. If the decision below is permitted to stand, it will enable appointing authorities to remove all persons appointed under such provisions with impunity and

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6. In *Hess v. Port Authority Trans-Hudson Corp.*, __ U.S. __, 115 S.Ct. 394 (1994), this Court determined that the interstate compact agency at issue (the Port Authority Trans-Hudson Corporation) should not be afforded Eleventh Amendment Immunity. In reaching that decision, the Court stated that "[b]ecause Compact Clause entities owe their existence to state and federal sovereigns acting cooperatively, and not to any 'one of the United States,' their political accountability is diffuse; they lack the tight tie to the people of one State that the instrument of a single State has: 'An interstate compact, by its very nature, shifts a part of a state's authority to another state or states, or to the agency the several states jointly create to run the compact. Such an agency under the control of special interests or gubernatorially appointed representatives is two or more steps removed from popular control, or even of control by a local government.' M. Ridgeway, Interstate Compacts: A Question of Federalism 300 (1971)." *Hess,* __ U.S. __, 115 S.Ct. at 401.

thereby poses a threat to the continued development of independent thought and consideration in agencies, commissions and interstate compact entities that at present may conduct themselves in a bi-partisan and non-political fashion.

CONCLUSION

For all the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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January 14, 1997

MAX PIEVSKY, Appellant,

v.

THOMAS J. RIDGE,
in his capacity as the Governor
of the Commonwealth of Pennsylvania.

No. 96-7206.

United States Court of Appeals,
Third Circuit.

Argued July 17, 1996.
Decided Oct. 16, 1996.
As Amended Oct. 22, 1996.

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Before SLOVITER, Chief Judge, COWEN and ROTH Circuit Judges.

OPINION

COWEN, Circuit Judge.

Former Commissioner of the Delaware River Port Authority of Pennsylvania and New Jersey ("DRPA"), Max Pievsky, filed a complaint challenging the Governor of Pennsylvania's power to remove him without cause under the terms of the DRPA Compact, an interstate agreement between the Commonwealth of Pennsylvania and the State of New Jersey. The district court dismissed the complaint on summary judgment, concluding that the Governor of Pennsylvania had the power to remove DRPA Commissioners prior to the expiration of their terms. Because we agree that, under the terms of

the DRPA Compact, the Governor of Pennsylvania has the power to remove the appointed DRPA Commissioners at will, we will affirm the April 12, 1996 order of the district court.

I.

Jurisdiction of the district court was invoked pursuant to 28 U.S.C. §§ 1331 and 1441(b). The construction of an interstate compact approved by Congress presents a federal question under 28 U.S.C. § 1331. *See Petty v. Tennessee-Missouri Bridge Comm'n,* 359 U.S. 275, 278, 79 S.Ct. 785, 788, 3 L.Ed.2d 804 (1959). We exercise appellate jurisdiction pursuant to 28 U.S.C. § 1291.

Our review of the district court's interpretation of the interstate compact is plenary. *Peters v. Delaware River Port Auth.,* 16 F.3d 1346, 1349 (3d Cir.), *cert. denied,* — U.S. ——, 115 S.Ct. 62, 130 L.Ed.2d 20 (1994).

II.

The parties stipulated to the following facts. The DRPA derives its authority from the DRPA Compact, an interstate agreement between the Commonwealth of Pennsylvania and the State of New Jersey. The Compact was originally enacted by the Pennsylvania and New Jersey legislatures in 1931 and is codified in reciprocal statutes at Pa. Stat. Ann. tit. 36, § 3503 (1995) and N.J. Stat. Ann. §§ 32:3-1 to 3-18 (West 1995). As required by the Compact Clause of the United States Constitution, U.S. Const. art. I, § 10, cl. 3, Congress originally consented to the terms of the Compact in 1932 and thereafter consented to amendments in 1952 and 1992.

The DRPA was created, among other things, to construct and operate bridges across the Delaware River, to construct and maintain facilities for the transportation of passengers between Pennsylvania and New Jersey, and to improve and develop the ports of Philadelphia and Camden. DRPA Compact, Article I, 36 P.S. § 3503. The DRPA has sixteen commissioners, eight of whom are appointed from Pennsylvania and eight of whom are appointed from New Jersey. The Compact

establishes the procedure for the appointment of the eight commissioners from Pennsylvania as follows:

> [s]ix of the eight commissioners for the Commonwealth of Pennsylvania shall be appointed by the Governor of Pennsylvania for terms of five years. The Auditor General and the State Treasurer of said Commonwealth shall, ex-officio, be commissioners for said Commonwealth, each having the privilege of appointing a representative to serve in his place at any meeting of the commission which he does not attend personally.
>
> All commissioners shall continue to hold office after the expiration of the terms for which they are appointed or elected until their respective successors are appointed and qualify, but no period during which any commissioner shall hold over shall be deemed to be an extension of his term of office for the purpose of computing the date on which his successor's terms expire.

DRPA Compact, Article II, 36 P.S. § 3503. Article II of the Compact states that the New Jersey appointees must be confirmed by the Senate of New Jersey, but does not require legislative confirmation of Pennsylvania's appointees.

The states have significant control over the DRPA. The Compact provides that the Board may act only by way of a majority of each state's commissioners voting in favor of the action. In 1992, the state legislatures amended the Compact to allow each state to pass legislation authorizing its Governor to veto the action of any of the state's commissioners within ten days of receipt of the minutes of the meeting at which the vote was taken.

On December 28, 1994, former Governor of Pennsylvania Robert Casey appointed Max Pievsky as a commissioner of the DRPA. The commission, signed by the Governor, states that Pievsky shall hold office until December 28, 1999. On January 22, 1996, Pievsky received a telephone call from Leslie Gromis, Director of Governor Ridge's Office of Public Liaison. Gromis informed Pievsky that the Governor was disappointed in Pievsky's vote for a new chairperson for the

DRPA Board on January 17, 1996. Gromis further stated that if Pievsky did not resign the next day, the Governor would make an appointment to the DRPA to replace him.

III.

On January 23, 1996, Pievsky filed suit in the Commonwealth Court of Pennsylvania seeking to enjoin Governor Ridge from removing him as a commissioner. The Governor removed the case to the United States District Court for the Middle District of Pennsylvania, asserting that Pievsky's claims arise under the laws of the United States pursuant to 28 U.S.C. §§ 1331 and 1441(b).

The district court issued an opinion and entered an order denying Pievsky's requests for declaratory judgment and permanent injunctive relief. In its interpretation of the Compact, it held that the Governor may remove Pievsky prior to the expiration of his term in 1999. Pievsky filed a notice of appeal and a motion in the district court for a stay pending appeal. The district court granted a stay prohibiting the Governor from removing Pievsky pending resolution of an appeal to this Court. We vacated the district court's grant of a stay pending appeal. Thereafter, Pievsky was removed by the Governor as a DRPA Commissioner. Pievsky appealed to the Supreme Court for a stay preventing his removal from office. The application was denied. The matter is now before us on Pievsky's appeal of the district court's order denying his application for a declaratory judgment and injunctive relief reinstating him to the position of commissioner of the DRPA.

IV.

The issue we must decide is strictly one of statutory construction. Does the DRPA Compact allow the Governor of Pennsylvania to remove a commissioner to the DRPA at will and prior to the expiration of his term?

A.

Since the Compact is an interstate agreement which requires the consent of Congress, such Congressional consent

transforms the Compact into an agreement pursuant to federal law. *See Cuyler v. Adams,* 449 U.S. 433, 438, 101 S.Ct. 703, 707, 66 L.Ed.2d 641 (1981); *see also Petty v. Tennessee-Missouri Bridge Comm'n,* 359 U.S. 275, 278, 79 S.Ct. 785, 788, 3 L.Ed.2d 804 (1959); *Delaware River Joint Toll Bridge Comm'n v. Colburn,* 310 U.S. 419, 427, 60 S.Ct. 1039, 1041, 84 L.Ed. 1287 (1940). Our interpretation of the terms and conditions of the Compact is, therefore, governed by federal law. *See Cuyler,* 449 U.S. at 438, 101 S.Ct. at 707; *see also Petty,* 359 U.S. at 278, 79 S.Ct. at 788.

Though state law is not binding, federal courts show deference to prior state adjudications and rulings in construing an interstate compact. *See State ex rel. Dyer v. Sims,* 341 U.S. 22, 28, 71 S.Ct. 557, 560, 95 L.Ed. 713 (1951) ("To determine the nature and scope of obligations as between States [when] they arise through the legislative mean of compact . . . is the function and duty of the Supreme Court of the Nation. Of course every deference will be shown to what the highest court of a State deems to be the law and policy of its State . . ."); *see also Petty,* 359 U.S. at 278, n. 4, 79 S.Ct. at 788, n. 4 ("While we show deference to state law in construing a compact, state law as pronounced in prior adjudications and rulings is not binding"); *Seattle Master Builders Ass'n v. Pacific Northwest Elec. Power & Conserv. Planning Council,* 786 F.2d 1359, 1365 (9th Cir.1986), *cert. denied,* 479 U.S. 1059, 107 S.Ct. 939, 93 L.Ed.2d 989 (1987) ("While congressional consent gives an interstate compact some attributes of federal law, the Council members' appointment, salaries, and administrative operations are pursuant to the laws of the four individual states, within parameters set by the Act.").

B.

The Compact is merely an agreement between states that has received the imprimatur of Congress. The interpretation of the Compact must be grounded and based upon the very language of the instrument. *See Texas v. New Mexico,* 482 U.S. 124, 128, 107 S.Ct. 2279, 2283, 96 L.Ed.2d 105 (1987). The Compact between Pennsylvania and New Jersey states that

"[s]ix of the eight commissioners for the Commonwealth of Pennsylvania shall be appointed by the Governor of Pennsylvania for terms of five years." DRPA Compact, Article II, 36 P.S. § 3503. It does not explicitly state whether the commissioners may be removed by the governor prior to the expiration of their term.

The long-standing rule in the context of federal appointments is that "[i]n the absence of specific provision to the contrary, the power of removal from office is incident to the power of appointment." *Keim v. United States,* 177 U.S. 290, 293, 20 S.Ct. 574, 575, 44 L.Ed. 774 (1900); *accord Myers v. United States,* 272 U.S. 52, 161, 47 S.Ct. 21, 40, 71 L.Ed. 160 (1926); *see also Kalaris v. Donovan,* 697 F.2d 376, 389 & n. 54 (D.C.Cir.) *cert. denied,* 462 U.S. 1119, 103 S.Ct. 3088, 77 L.Ed.2d 1349 (1983) (quoting *Cafeteria & Restaurant Workers Union v. McElroy,* 367 U.S. 886, 896, 81 S.Ct. 1743, 1749, 6 L.Ed.2d 1230 (1961)). Pennsylvania has also adopted this principle of law. *See American Fed'n of State, County, and Mun. Employees v. Shapp,* 443 Pa. 527, 280 A.2d 375, 377 (1971); *see also Commonwealth ex rel. Haymaker v. Black,* 201 Pa. 433, 50 A. 1008 (1902). The Compact explicitly gives the Governor of Pennsylvania the power to appoint six commissioners to the DRPA. Accordingly, pursuant to federal law, there is a presumption that the Governor also has the authority to remove those six commissioners prior to the end of their terms.

Pievsky argues that since the DRPA Commissioner's term of office is five years, as compared to the Governor's four year term of office, the Pennsylvania legislature and Congress intended to limit the Governor's power of removal. We disagree. The fact that the Governor's term of office is shorter than that of the commissioners does not indicate an intent on the part of the legislature to limit the Governor's ability to remove his appointees. If the Pennsylvania legislature intended such a limitation, it would have stated so in the Compact. Instead, the Compact simply reads that the Governor of Pennsylvania shall appoint a DRPA Commissioner for a term of five years. Since the power to remove is incident to the power to appoint, we hold that under the terms of the Com-

pact the Governor of Pennsylvania has the authority to remove a DRPA Commissioner at will.

We believe that the difference in the length of terms of office is irrelevant. Since the Compact provides that commissioners may hold office after the expiration of the term for which they are appointed, and "no period during which any commissioner shall hold over shall be deemed to be an extension of this term of office for the purpose of computing the date on which his successor's term expires," DRPA Compact, Article II, 36 P.S. § 3503, a commissioner's term of office may in fact be for four years or less. This would occur if a commissioner is succeeding a prior commissioner who has continued to hold office after the expiration of his term of office.

Pievsky also contends that interpreting the Compact to permit the Governor to remove a commissioner at will vitiates the plain language of the Compact which provides that six of the Commonwealth's commissioners "shall be appointed by the Governor of Pennsylvania for terms of five years." He asserts that five years means five years, and not less than five years. We are not persuaded. It is a long-standing rule in the federal courts that a fixed term merely provides a time for the term to end. The fixed term is merely a "cap" with the appointee removable at will. *See Parsons v. United States,* 167 U.S. 324, 17 S.Ct. 880, 42 L.Ed. 185 (1897). We read the term "five years" as a means of limiting the length of the term of office, not as a prohibition on the Governor's removal authority.

C.

Pievsky next maintains that under federal law the terms of the DRPA Compact evidence an intent by the legislatures to limit the Governor's removal power because the Compact states that six of Pennsylvania's commissioners "shall be appointed by the Governor . . . for terms of five years." Compact art. II. The case law cited by Pievsky in support of his argument are readily distinguishable. In *Humphrey's Executor v. United States,* 295 U.S. 602, 55 S.Ct. 869, 79 L.Ed. 1611 (1935), the Supreme Court reviewed President Roosevelt's attempt to remove a member of the Federal Trade Commis-

sion ("FTC"). Pursuant to the Federal Trade Commission Act, 15 U.S.C. §§ 41, 42, commissioners of the FTC were appointed for fixed rotating terms. The Federal Trade Commission Act provides that "[a]ny commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office." 15 U.S.C. § 41. The Supreme Court held that in light of the statutory language limiting removal, "the fixing of a definite term subject to removal for cause, unless there be some countervailing provision or circumstance indicating the contrary, which here we are unable to find, is enough to establish the legislative intent that the term is not to be curtailed in the absence of such cause." *Humphrey's Executor,* 295 U.S. at 624, 55 S.Ct. at 872. The statute at issue in *Humphrey's Executor* contained clear language limiting the removal authority of the President—such language is absent from the Compact.

Moreover, the Supreme Court in *Humphrey's Executor* considered the character of the commission as an essential basis for its holding. The Court determined that the FTC was a nonpartisan body, charged "with the enforcement of no policy except the policy of the law", and that "[i]ts duties are neither political nor executive, but predominantly quasi judicial and quasi legislative." 295 U.S. at 624, 55 S.Ct. at 872. The *Humphrey's Executor* court noted that

> [I]t is quite evident that one who holds his office only during the pleasure of another, cannot be depended upon to maintain an attitude of independence against the latter's will.

295 U.S. at 629, 55 S.Ct. at 874. Accordingly, the *Humphrey's Executor* court concluded that the President did not have the authority to remove a member of the FTC prior to the expiration of that member's term of office for reasons in addition to those specifically stated in the statute. In contrast, the DRPA is neither a quasi legislative or quasi judicial body. Also, in contrast to the character of the FTC, the DRPA is a politically sensitive body that must be responsive to the programs and policies of the administration presently in office.

We have previously discussed how the DRPA officers must be politically accountable in *Peters v. Delaware River*

Port Authority, 16 F.3d 1346, 1354-55 (3d Cir.), *cert. denied,* —— U.S. ——, 115 S.Ct. 62, 130 L.Ed.2d 20 (1994). In *Peters,* the Secretary of the DRPA brought suit claiming that the DRPA infringed his constitutional rights of free speech and association by failing to reappoint him as its Secretary solely because he was a member of the New Jersey Republican Party. We rejected his claim, finding that party affiliation of the officers of the DRPA was relevant to the effective functioning of the DRPA. We stated,

> The DRPA has broad powers, leaving much room for principled disagreement on policy goals or their implementation.
>
> • • • •
>
> The policy and political issues, including economic considerations, arising in an entity such as the DRPA are many. If tolls are raised, bridges fall into disrepair, or traffic is congested, there are surely political consequences. Whether decent roads and transit systems will be made available to all segments of the communities, or will be provided in a manner perceived as favoring some or excluding others, raises important and sensitive social, economic and political questions. . . . Since the governors of New Jersey and Pennsylvania directly appoint fourteen of the sixteen member Board of Commissioners, political responsibility for the DRPA's successes and failures can be expected to fall on the ruling administration of each state.
>
> • • • •
>
> Obviously, the party affiliation or policy views of the officers in the DRPA could be relevant to the effective presentation and implementation of particular policy goals. If the states preferred huge increases in spending for the construction of bridges, for example, they might legitimately prefer that high positions in the DRPA not be filled with individuals belonging to a party which advocates decreased government spending.

16 F.3d at 1355. Therefore, the DRPA Commissioners must be accountable to the administration in office in order for the DRPA to function properly.

The goals of each state are accomplished only through the DRPA's responsiveness to each state. In order to ensure such responsiveness, the Governor must have the authority to remove Pennsylvania's appointed commissioners. The fact that Pennsylvania's representation on the Commission is comprised exclusively of Executive Department appointees and officials lends support to the conclusion that the DRPA is meant to be responsive to the Executive Branch of the Commonwealth of Pennsylvania. Six of Pennsylvania's eight commissioners are appointed by the governor, and the remaining two members who serve ex-officio are the State Treasurer and the Auditor General, both of whom are officers of the Executive Department. Compact art. II; 36 P.S. § 3503. The ability of the Governor to remove DRPA Commissioners ensures that the commissioners are politically accountable to each state's administration. This case is clearly distinguishable from the Supreme Court's holding in *Humphrey's Executor.*

The facts underlying *Wiener v. United States,* 357 U.S. 349, 78 S.Ct. 1275, 2 L.Ed.2d 1377 (1958) are also distinguishable. In *Wiener*, the Supreme Court reviewed President Eisenhower's attempt to remove a member of the War Claims Commission ("WCC"). Congress established the WCC to adjudicate claims by United States citizens against Japan as a result of World War II. The statute was silent with regard to the removal of members of the WCC. It provided that the commissioners' terms would expire simultaneously with the life of the Commission. The Supreme Court concluded that the adjudicatory nature of the task imposed by Congress on the WCC lead to the conclusion that Congress did not leave room for the President to remove members and replace them with individuals of his own choosing. The Court stated,

> If, as one must take for granted, the War Claims Act precluded the President from influencing the Commission in passing on a particular claim, *a fortiori*, it must be inferred that Congress did not wish to have hang over the Commission the Damocles' sword of removal by the

> President for no reason other than that he preferred to have on that Commission men of his own choosing.

Wiener, 357 U.S. at 356, 78 S.Ct. at 1279. Here, the DRPA does not perform any tasks that may be classified as adjudicatory. In contrast to the WCC, the Compact between Pennsylvania and New Jersey envisions that the administration of each state would influence the DRPA in deciding which policies to implement and which goals to pursue.

We also find that *Borders v. Reagan,* 518 F.Supp. 250 (D.D.C.1981), *order vacated as moot,* 732 F.2d 181 (D.C.Cir.1982), is distinguishable. In *Borders,* the district court held that President Reagan could not remove at will a member of the District of Columbia Judicial Nominating Commission that President Carter had appointed. The District of Columbia Self-Government and Governmental Reorganization Act ("Act") provides that the Commission would consist of seven members who "shall serve" for terms of six years, except for the member appointed by the President who "shall serve" for a term of five. 11 D.C.Code App. § 434 (Supp. IV 1977). The Act made no provision for the removal of commission members.

The district court in *Borders* held the language of the statute made clear that Congress did not intend a member of the commission would serve only at the pleasure of the appointing authority; rather, once an appointment was made it anticipated that the member would serve a complete term. The plain language of the Act provides that a member "shall serve" for the term of years. The Act makes no provision for the removal of a member, but does provide for the appointment of a member when a vacancy occurs. The district court noted that the Act contemplated that vacancies would occur only at the expiration of a given term: The Act provides that for vacancies occurring "other than [upon] the expiration of a prior term," the new member would serve only for the "remainder of the unexpired term of his predecessor." Act at § 434(b)(2). Thus, even if *Borders* were binding on us, the district court's conclusion in that matter that Congress did not intend a commissioner to be removed at will is distinguishable.

The plain language of the DRPA Compact does not indicate, as the language of the statute in *Borders* did, that the state legislatures contemplated vacancies on the DRPA Board would occur only at the expiration of DRPA members' expired terms. Moreover, the court's decision in *Borders* rested on additional grounds that are not present in this case. The Act provided for staggered terms for six of the commissioners, which the court determined was evidence of Congressional intent that the members be isolated from political considerations and political changes.

Pievsky also asserts that the DRPA is an interstate entity which is not under the control of the Commonwealth of Pennsylvania or the State of New Jersey. He cites *Hess v. Port Authority Trans-Hudson Corp.*, —— U.S. ——, 115 S.Ct. 394, 130 L.Ed.2d 245 (1994), for the proposition that "[b]ecause Compact Clause entities owe their existence to state and federal sovereigns acting cooperatively, and not to any 'one of the United States,' . . . their political accountability is diffuse; they lack the tight tie to the people of one State that an instrument of a single State has." — U.S. at ——, 115 S.Ct. at 401. We agree that the DRPA is not under the control of any one state. As we stated in *Peters* the DRPA is "not designed to further the political agenda of any one state or administration." *Peters,* 16 F.3d at 1355. Nevertheless, pursuant to the appointing process, Pennsylvania-appointed DRPA officials are under the control of the Pennsylvania Governor, just as New Jersey-appointed DRPA Commissioners must be politically accountable to the Governor of New Jersey.

D.

As previously discussed, in *Humphrey's Executor,* the Supreme Court stated "the power of the President to remove an officer shall prevail over the authority of Congress to condition the power by fixing a definite term and precluding a removal except for cause will depend upon the character of the office." 295 U.S. at 631-32, 55 S.Ct. at 875. In *Morrison v. Olson,* 487 U.S. 654, 108 S.Ct. 2597, 101 L.Ed.2d 569 (1988), the Supreme Court clarified the meaning of the "character of the office" inquiry that courts must undertake in assessing

whether Congress has impermissibly restricted the executive branch's authority to remove an appointed official. The *Morrison* Court was faced with the question of whether the provisions of the Ethics in Government Act impermissibly restricted the Attorney General's ability to remove the independent counsel. The Court stated that the legitimacy of congressional limitations on the chief executive's powers of removal turns upon "whether the removal restrictions are of such a nature that they impede the President's ability to perform his constitutional duty, and the functions of the officials in question must be analyzed in that light." *Id.* at 690-91, 108 S.Ct. at 2619.

The *Morrison* Court went on to hold that the Act did not impermissibly interfere with the President's ability to perform his constitutional duty because, though the President could not remove the independent counsel at will, the statute provided that the President, through the Attorney General, could remove the independent counselor for good cause. The Supreme Court reasoned that this ability gives the President "ample authority to assure that the counsel is competently performing his or her statutory responsibilities. . . ." *Id.* at 692, 108 S.Ct. at 2620.

Pievsky's case is distinguishable from *Morrison* because the "character of office" analysis is based on a separation of powers inquiry which is not at issue here; and in any event, here, the Governor's inability to remove DRPA Commissioners prior to the expiration of their terms would impede his ability to carry out his functions as Chief Executive of the Commonwealth of Pennsylvania. As Governor, the defendant in this case is charged with ensuring that the laws of the state are "faithfully executed." Pa. Const. art. II, § 2. The Governor's obligation to ensure the proper functioning of the DRPA is one of the duties charged to him pursuant to the Commonwealth's Constitution. Moreover, The Pennsylvania Constitution states:

> All civil officers shall hold their offices on the condition that they behave themselves well while in office, and shall be removed on conviction of misbehavior in office or of

> any infamous crime. Appointed civil officers, other than the judges of the courts of record, may be removed at the pleasure of the power by which they shall have been appointed.

Pa. Const. art. VI, § 7. Pievsky is neither a "judge of the courts of record," nor "a civil officer elected by the people." Absent language in the Compact to the contrary, which we do not find, the Governor's constitutional duty includes removing appointed officials at his pleasure. Because the Compact does not limit the Governor's removal power, the Governor may exercise his power under the Pennsylvania Constitution to remove appointed officials to the DRPA Board. We agree with Pievsky's contention that the Compact is in the nature of federal law, and, under the Supremacy Clause of the U.S. Constitution, *could* limit the Governor's ability to remove his appointed officials. However, as discussed above, we conclude under a federal law analysis that the legislatures which passed the Compact did not intend to restrict the Governor's ability to remove DRPA Commissioners in this manner.

The appointed members of the DRPA are "policy makers" who exercise executive powers and are expected to carry out the policies of the current administration of each state; they are not comparable to the commissioners of the FTC, the commissioners of the WCC, or the independent counsel in *Morrison*. Far from needing independent appointees, "the DRPA needs officers who are capable of efficiently, effectively, and loyally accessing the political channels that influence the DRPA's agenda and direction." *Peters*, 16 F.3d at 1356. Considering the mission of the DRPA, and the burden that interstate conflicts place on the effective functioning of this bi-state authority, the legislatures could not have intended to create a board on which Pennsylvania's members are independent of the current Governor.

E.

Though state law is not binding, federal courts show deference to prior state adjudications and rulings in construing an interstate compact. *See State ex rel. Dyer v. Sims,* 341 U.S. 22, 28, 71 S.Ct. 557, 560, 95 L.Ed. 713 (1951). Pennsylvania law is

in accord with federal law that the Pennsylvania Governor may remove a DRPA commissioner at will and prior to the expiration of the term. The removal of state officers in Pennsylvania is governed by the Commonwealth's Constitution which provides that "[a]ppointed civil officers, other than the judges of the courts of record, may be removed at the pleasure of the power by which they shall have been appointed." Pa. Const. art. VI, § 7. In the absence of statutory language providing otherwise this constitutional provision governs the removal of appointed officials. *Watson v. Pennsylvania Turnpike Comm'n,* 386 Pa. 117, 125 A.2d 354, 356-57 (1956). The legislature may "impose such terms and limitations with reference to the tenure and removal of an incumbent [state official] as it sees fit." *Id.* 125 A.2d at 356.

The Pennsylvania Supreme Court has held that where a statute provides for fixed terms with staggered expiration dates, the legislature intended that those appointed shall not be removable at the will of the appointing authority. *Id.* at 356-57; *see also Commonwealth ex rel. Sortino v. Singley,* 481 Pa. 367, 392 A.2d 1337 (1978); *Bowers v. Pennsylvania Labor Relations Bd.,* 402 Pa. 542, 167 A.2d 480, 484-85 (1961); *Commonwealth ex rel. Hanson v. Reitz,* 403 Pa. 434, 170 A.2d 111 (1961). However, the mere fixing of a definite term does not override the dictates of Article VI, § 7 of the Constitution which gives removal power to the appointing authority. *See Schluraff v. Rzymek,* 417 Pa. 144, 208 A.2d 239 (1965) (plaintiff appointed to fixed term removable at-will); *see also Naef v. City of Allentown,* 424 Pa. 597, 227 A.2d 888, 890-891 (1967) (plaintiff appointed to fixed term of four years removable at-will; "solicitor is an important confidant . . . in the administration of the city's business. To hold that one who is unacceptable must be retained in such a position would lead to a seriously disturbed municipal situation."); *Commonwealth ex rel. Schofield v. Lindsay,* 330 Pa. 120, 198 A. 635 (1938). Pennsylvania case law provides that the staggering of terms, not the mere fixing of a definite term in office, bars the Governor from removing an appointed official at will. *See Naef,* 227 A.2d at 890; *see also Schluraff,* 208 A.2d at 239. Therefore, in light of the fact that the DRPA Commissioners' terms are fixed and

not staggered, the Pennsylvania Constitution, as interpreted by the Pennsylvania Supreme Court, does not preclude the Governor from removing Pievsky prior to the expiration of his term.

We note that the Pennsylvania Attorney General has officially opined that Pennsylvania's appointees to the DRPA are removable at will. *See* Pennsylvania Attorney General's Official Opinion, No. 280 issued on March 24, 1939 at 1939- 40. Article VI, Section 4 was renumbered as Article VI, Section 7 in 1966. Pennsylvania courts and state agencies accord deference to the formal opinions of Pennsylvania's Attorney General on matters of statutory interpretation. *Baird v. Township of New Britain,* 159 Pa.Cmwlth. 333, 633 A.2d 225, 229 n. 7 (1993), *allocatur denied,* 537 Pa. 635, 642 A.2d 488 (1994); *see also Schell v. Eastern York Sch. Dist.,* 92 Pa.Cmwlth. 333, 500 A.2d 896 (1985). We note that the Attorney General of New Jersey has also issued an opinion that the Pennsylvania appointees to the DRPA Board are removable at will by the Governor of Pennsylvania. Def.'s Supplemental Appendix, Memorandum from Attorney General George F. Kugler, Jr. to Governor William T. Cahill, October 6, 1971. We need not decide the extent of deference due in this situation in light of all the other convincing bases for our conclusion that by reason of the state constitutional provisions governing the removal of appointed officials, and given that the DRPA commissioners' terms are fixed and not staggered, the Governor has the power to remove appointed DRPA Commissioners at will.

V.

For the foregoing reasons, we conclude that the Governor of Pennsylvania has the power to remove an appointed DRPA Commissioner at will and prior to the expiration of the term. Accordingly, we will affirm the order of the district court entered on April 12, 1996. Each party to bear its own costs.

MAX PIEVSKY,
Plaintiff,
v.
THOMAS J. RIDGE,
in his capacity as the Governor of Pennsylvania,
Defendant.

Civil Action No. 1:CV-96-011.

United States District Court,
M.D. Pennsylvania.

April 12, 1996.

Richard A. Sprague, Philadelphia, PA, Peter Konolige, David S. Lubin, Sprague & Sprague, Philadelphia, PA, for plaintiff.

Gregory E. Dunlap, Office of General Counsel, Deputy General Counsel, Harrisburg, PA, Eric L. Settle, Stephanie A. Middleton, Office of General Counsel, Harrisburg, PA, for defendant.

MEMORANDUM

RAMBO, Chief Judge.

I. *Introduction*

Plaintiff Pievsky originally filed this action by order to show cause on January 23, 1996, in the Commonwealth Court of Pennsylvania. Plaintiff sought a temporary restraining order and preliminary injunction prohibiting Defendant Ridge from dismissing him from his position as a Delaware River Port Authority (DRPA) Commissioner. The underlying complaint seeks a declaratory judgment that Plaintiff is entitled to remain in his position as a DRPA Commissioner until the expiration of his term on December 28, 1999, and permanent injunctive relief enjoining Defendant from removing him from his post prior to that time. Because the relief Plaintiff seeks raises a question of federal law, pursuant to 28 U.S.C. § 1331 Defendant Ridge removed the case to this court on the same day it was filed in state court.

On January 25, 1996, the court held a hearing on Plaintiff's request for a temporary restraining order and preliminary

injunction. At the hearing, Defendant Ridge agreed not to remove Plaintiff from his position on the DRPA until the court reached its final decision. The parties concurred that a trial would not be necessary and agreed to stipulate to the relevant facts. The court imposed a briefing schedule with regard to the legal issues in the case and conducted oral argument on March 28, 1996. This memorandum and accompanying order constitute the court's conclusions of law regarding Plaintiff's entitlement to remain as a Commissioner of the DRPA until the expiration of his term on December 28, 1999.

II. *Stipulated Facts*

The following facts have been stipulated to by the parties.

The DRPA derives its authority from the DRPA Compact, an interstate agreement between the Commonwealth of Pennsylvania and the State of New Jersey. The Compact was originally enacted by the Pennsylvania and New Jersey legislatures in 1931 and is codified in reciprocal statutes at Pa.Stat. Ann. tit. 36, § 3503 (1995) and N.J.Stat.Ann. §§ 32: 3-1 to 3-18 (West 1995). As required by the Compact Clause of the United States Constitution, U.S. Const. art. I, § 10, cl. 3, Congress originally consented to the terms of the Compact in 1932 and thereafter consented to amendments in 1952 and 1992. *See* 47 Stat. 308; 66 Stat. 738; 106 Stat. 3576.

Article II of the Compact provides that the DRPA Commission "shall consist of sixteen commissioners, eight resident voters of the Commonwealth of Pennsylvania, and eight resident voters of the State of New Jersey. . . ." Compact art. II. The Compact also states:

> [s]ix of the eight commissioners for the Commonwealth of Pennsylvania shall be appointed by the Governor of Pennsylvania for terms of five years. The Auditor General and the State Treasurer of said Commonwealth shall, *ex-officio,* be commissioners for said Commonwealth, each having the privilege of appointing a representative to serve in his place at any meeting of the commission which he does not attend personally.

* * * * * *

> All commissioners shall continue to hold office after the expiration of the terms for which they are appointed or elected until their respective successors are appointed and qualify, but no period during which any commissioner shall hold over shall be deemed to be an extension of his term of office for the purpose of computing the date on which his successor's term expires.

Id.

On December 28, 1994, former Governor of Pennsylvania Robert P. Casey appointed Plaintiff as a member of the DRPA.[1] The commission signed by the Governor states that Plaintiff shall hold office until December 28, 1999, "and until [his] successor is appointed and qualified, if [he] shall so long behave [him]self well." (Joint Ex. 1.)

On January 22, 1996, Plaintiff received a telephone call from Leslie Gromis, Director of Defendant Ridge's Office of Public Liaison. Ms. Gromis informed Plaintiff that Defendant was "disappointed" in his vote on January 17, 1996, on a new chairperson for the DRPA Board. Ms. Gromis further stated that if Plaintiff did not tender his resignation the next day, Defendant Ridge would make an appointment to the DRPA to replace him.

III. *Discussion*

A. The Governing Law

The issue before the court is one of statutory construction. Do the terms of the DRPA Compact entitle Plaintiff to remain as a Commissioner of the DRPA until the expiration

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1. In accordance with the statutory language of the Compact, throughout this memorandum, the court uses the term "DRPA" to refer to the DRPA Board and the DRPA Commission. The Board and the Commission are one in the same. *See* Compact Art. XIII. Plaintiff is a member or Commissioner of the DRPA Board. The Board is "in charge of [the DRPA's] property and affairs." *Id.*

of his term, or conversely, do the terms of the Compact prohibit Defendant from removing him prior to that time?[2]

The parties differ as to whether state or federal law governs the court's determination regarding Defendant Ridge's authority to remove Plaintiff prior to the expiration of his term. Plaintiff contends that federal law controls, although he concedes that to the extent state law is not inconsistent, the court may accord it some degree of deference. (Pl.'s Br. in Supp. at 8.) Defendant argues that although the court has federal question jurisdiction pursuant to 28 U.S.C. § 1331, the terms of the DRPA Compact do not conflict with state law, and, therefore, the court must defer to the law of Pennsylvania in construing the Compact's provisions. The court's conclusion regarding the applicable law is consistent with the positions of both parties.

The DRPA was established pursuant to the DRPA Compact. Congressional consent to the Compact transformed it into federal law. *Cuyler v. Adams,* 449 U.S. 433, 438, 101 S.Ct. 703, 706, 66 L.Ed.2d 641 (1981); *Petty v. Tennessee-Missouri Bridge Comm'n,* 359 U.S. 275, 278, 79 S.Ct. 785, 788, 3 L.Ed.2d 804 (1959). The court's interpretation of the terms of the Compact is, therefore, governed by federal law. *Cuyler,* 449 U.S. at 438, 101 S.Ct. at 706; *Petty,* 359 U.S. at 278, 79 S.Ct. at 788; *State ex rel. Dyer v. Sims,* 341 U.S. 22, 27-29, 71 S.Ct. 557, 560-61, 95 L.Ed. 713 (1951); *Delaware River Joint Toll Bridge Comm'n v. Colburn,* 310 U.S. 419, 427-28, 60 S.Ct. 1039, 1040-41, 84 L.Ed. 1287 (1940); *Alcorn v. Wolfe,* 827 F.Supp. 47, 52-53 (D.D.C.1993); *Yancoskie v. Delaware River Port Auth.,* 385 F.Supp. 1170, 1171-72 (D.N.J.1974), *rev'd on other grounds,* 528 F.2d 722 (3d Cir.1975). What is not clear, however, is to what extent the court may look to the laws of Pennsylvania in construing the Compact's provisions. The Supreme Court's decisions holding that the interpretation of a

2. Plaintiff states in the complaint that he is seeking a declaratory judgment that he has the "unqualified right, absent misconduct, to remain in office until the expiration of his fixed term." (Compl. at ¶ 8.) However, Plaintiff's entitlement to remain in office until the end of his term necessarily depends upon whether or not Defendant has the authority to remove him prior to that time.

congressionally sanctioned interstate compact presents a question of federal law provide some guidance on this issue.

In *Delaware River Joint Toll Bridge Comm'n v. Colburn*, the Supreme Court held that "the construction of [an interstate] compact sanctioned by Congress by virtue of Article I, § 10, Clause 3 of the Constitution, involves a federal 'title, right, privilege, or immunity.' " 310 U.S. at 427-28, 60 S.Ct. at 1040-41 (quoting 28 U.S.C. § 334). In *Dyer v. Sims*, the Court found that its authority to construe an interstate agreement was based on its duty to "determine the nature and scope of obligations" between states. 341 U.S. at 28, 71 S.Ct. at 560.

The Supreme Court's conclusion that the interpretation of a congressionally approved interstate agreement presents a question of federal law rests upon the need to "safeguard . . . national interest[s]" that are necessarily affected when two or more states enter into agreements that potentially impact federal authority. *Id.* at 27-28, 71 S.Ct. at 560-61.[3] In order to fully ensure the protection of federal interests, the interpretation of an interstate compact necessarily must comport with federal law. For the Supreme Court to have held otherwise would have resulted in states acting as the final arbiters in interstate disputes regarding the meaning of congressionally approved interstate agreements. *Id.*, 341 U.S. at 28, 71 S.Ct. at 560. States would have held the power to unilaterally nullify compacts, and their terms would have been subject to varying interpretations.

The Supreme Court's decision in *Dyer* arose in precisely this context. In a decision construing West Virginia's obligations under the Ohio River Valley Water Sanitation Compact, the West Virginia Supreme Court held certain aspects of the compact void based on provisions in the West Virginia Consti-

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3. More recently, in *Cuyler v. Adams*, the Supreme Court noted that the Compact clause does not mandate congressional consent to an interstate compact when the agreement is not " 'directed to the formation of any combination tending to the increase of political power in the States, which may encroach upon or interfere with the just supremacy of the United States.' " 449 U.S. at 440, 101 S.Ct. at 708 (quoting *United States Steel Corp. v. Multistate Tax Comm'n*, 434 U.S. 452, 468, 98 S.Ct. 799, 810, 54 L.Ed.2d 682 (1978)).

tution. While noting that "every deference will be shown to what the highest court of a State deems to be the law and policy of its State, particularly when recondite or unique features of local law are urged," the *Dyer* Court held that the Supreme Court has "the final power to pass upon the meaning and validity of compacts." *Id.* In *Petty v. Tennessee-Missouri Bridge Comm'n,* the Supreme Court clarified Dyer by stating that "[w]hile we show deference to state law in construing a compact, state law as pronounced in prior adjudications and rulings is not binding." 359 U.S. at 278 n. 4, 79 S.Ct. at 788 n. 4 (citations omitted). *See also Alcorn,* 827 F.Supp. at 52-53 (noting that states may not unilaterally modify terms of congressionally approved interstate compacts and that compact terms take precedence over conflicting state law); *Yancoskie,* 385 F.Supp. at 1172 (state law may be consulted in construing compacts, but does not control).

The court notes that the application of federal law to the question at hand, whether the Governor of Pennsylvania may remove a Commissioner of the DRPA, seems somewhat inappropriate given the nature of the issue. Although it recognizes that in most instances the construction of an interstate compact involves issues of national importance, it is not clear to the court that the instant case raises such a concern. The question of whether or not the Governor has the authority to remove at will a member of the DRPA does not fall within the class of cases that have resulted in the clear precedent that the interpretation of a congressionally approved interstate compact presents a federal question and must proceed in accordance with federal law. Almost all of the cases that have resulted in the Supreme Court holding that federal law governs the construction of congressionally sanctioned interstate agreements involved issues that were central to the compacts' operations and therefore of national importance. *See Cuyler,* 449 U.S. at 435, 101 S.Ct. at 705 (issue of whether incarcerated prisoners maintain right to pretransfer hearing before being transferred to another state pursuant to Article IV of Detainer Agreement); *Petty,* 359 U.S. at 280, 79 S.Ct. at 789 (question of whether states to compact waived immunity from suit); *Dyer,* 341 U.S. at 27, 71 S.Ct. at 560 (review of West Virginia

Supreme Court's holding that state legislature's ratification of Ohio River Valley Sanitation Compact invalid). The court's concern in applying federal law to the case at hand stems from its reluctance to "dislodge" the laws of the Commonwealth of Pennsylvania which address what is primarily a matter of "local concern"—the ability of the Governor to remove a member of the DRPA. *See Petty,* 359 U.S. at 289, 79 S.Ct. at 794 (Frankfurter, J., dissenting) ("To imply from a congressional consent changes in the law of the Compact States of merely local concern ... would constitute a complete disregard of the purpose of the Constitution in requiring congressional consent to Compacts. Such disregard would introduce a wholly irrational disharmony in the application of local policy.").

Based on its review of the case law, the court concludes that federal law provides the ultimate rule of decision in its interpretation of the terms of the DRPA Compact. However, to the extent that Pennsylvania law does not conflict with federal case law and the terms of the Compact itself, the court will consult Pennsylvania law in conducting its analysis.

B. Plaintiff's Entitlement to Remain as a DRPA Commissioner Until the Expiration of His Term in 1999

1. *Federal law*

The Compact is silent regarding the removal of appointed commissioners. The long-standing rule in the context of federal appointments is that "in the face of statutory silence, the power of removal presumptively is incident to the power of appointment." *Kalaris v. Donovan,* 697 F.2d 376, 389 (D.C.Cir.1983) (citing *Cafeteria and Restaurant Workers Union v. McElroy,* 367 U.S. 886, 81 S.Ct. 1743, 6 L.Ed.2d 1230 (1961); *In re Hennen,* 38 U.S. (13 Pet.) 230, 10 L.Ed. 138 (1839)), *cert. denied,* 462 U.S. 1119, 103 S.Ct. 3088, 77 L.Ed.2d 1349 (1983). Pennsylvania courts have also adopted this principle of law. *See American Federation of State, County, and Municipal Employees v. Shapp,* 443 Pa. 527, 280 A.2d 375, 377 (1971); *Commonwealth ex rel. Haymaker v. Black,* 201 Pa. 433, 50 A. 1008, 1009 (1902). Thus, the terms of the Compact on their

face indicate that Defendant has the authority to remove Plaintiff prior to the end of his term.

In *Humphrey's Executor v. United States,* 295 U.S. 602, 55 S.Ct. 869, 79 L.Ed. 1611 (1935), the Supreme Court held that the legislature can by statute limit the power of an appointing authority to remove officials at will. *See also Watson v. Pennsylvania Turnpike Comm'n,* 386 Pa. 117, 125 A.2d 354, 356- 57 (1956) ("It . . . is established in this State beyond respectable controversy that, where the legislature creates a public office, it may impose such terms and limitations with reference to the tenure and removal of an incumbent as it sees fit."). Plaintiff maintains that the terms of the DRPA Compact evidence an intent by the legislatures to limit Defendant's removal power, in that the statute states that six of Pennsylvania's Commissioners "shall be appointed by the Governor . . . for terms of five years." Compact art II. Plaintiff cites *Humphrey's Executor, Wiener v. United States,* 357 U.S. 349, 78 S.Ct. 1275, 2 L.Ed.2d 1377 (1958), and *Borders v. Reagan,* 518 F.Supp. 250 (D.C.Cir.1981), *vacated as moot* 732 F.2d 181 (D.C.Cir.1982), in support of his argument. The Court finds that the cases cited by Plaintiff are readily distinguishable from the facts of the present case and that federal law provides no support for such an interpretation of the Compact.

The issue in *Humphrey's Executor* was whether President Roosevelt could remove a member of the Federal Trade Commission (FTC). Pursuant to statute, Commissioners of the FTC were appointed for fixed rotating terms and were subject to removal for cause. 295 U.S. at 623, 55 S.Ct. at 872. In light of the statutory language limiting removal, the Supreme Court held that "the fixing of a definite term *subject to removal for cause* . . . is enough to establish the legislative intent that the term is not to be curtailed in the absence of such cause." *Id.* (emphasis added). The statute at issue in *Humphrey's Executor* contained clear language limiting the removal authority of the President—language that is absent from the Compact. Additionally, an essential basis for the Supreme Court's holding in *Humphrey's Executor* was the "quasi-legislative" and "quasi-judicial" nature of the body whose member the President was attempting to remove. 295 U.S. at 624, 55 S.Ct. at

872. The DRPA cannot be classified as either a "quasi-legislative" or "quasi- judicial" body.

In *Wiener,* the Supreme Court prohibited President Eisenhower from removing a member of the War Claims Commission (WCC). 357 U.S. at 355-56, 78 S.Ct. at 1279. Congress had set up the WCC to adjudicate claims by United States citizens against Japan as a result of World War II. *Id.* at 354, 78 S.Ct. at 1278. The statute was silent with regard to the removal of members of the WCC and provided that their terms would expire simultaneously with the life of the Commission. *Id.* at 349, 78 S.Ct. at 1275. The Supreme Court concluded that the adjudicatory nature of the task imposed by Congress on the WCC lead to the conclusion that Congress did not leave room for the President to remove members and replace them with individuals of his own choosing. *Id.* at 357, 78 S.Ct. at 1279. The DRPA does not perform any tasks that can be classified as adjudicatory.

In *Borders*, the district court held that President Reagan could not remove at will a member of the District of Columbia Judicial Nominating Commission President Carter had appointed. 518 F.Supp. at 252. The statute at issue in *Borders* provided that the Commission would consist of seven members who "shall serve" for terms of six years, except for the member appointed by the President who "shall serve" for a term of five. *Id.* at 254. The statute made no provision for the removal of commission members. However, the district court found that the statute clearly contemplated that vacancies would occur only at the expiration of a given term. *Id.* at 255. In accordance with that view, the statute provided that for vacancies occurring "othe than [upon] the expiration of a prior term," the new member would serve only for the "**remainder** of the **unexpired term** of his predecessor." *Id.* (emphasis in original). The court concluded that the language of the statute indicated Congress' intent that "once an appointment is made ... the member will serve a complete term." *Id.* On its face, the language of the DRPA Compact does not indicate, as the language of the statute in *Borders*

did, that the legislatures contemplated that vacancies on the DRPA Board would occur only at the expiration of DRPA members' expired terms.[4]

Since federal law provides no support for an interpretation of the Compact which would limit Defendant's removal authority, as will be discussed below the court will defer to the law of Pennsylvania in construing the terms of the Compact. Before undertaking that analysis, however, further consideration of federal law is warranted.

Even if the court accepts Plaintiff's position that on its face the Compact restricts the Governor's removal authority, *Humphrey's Executor*, would require the court to look beyond the statutory language in assessing whether Defendant has the authority to remove at will. In *Humphrey's Executor*, the Supreme Court stated the question of whether "the power of the President to remove an officer shall prevail over the authority of Congress to condition the power by fixing a definite term and precluding removal for cause will depend upon the character of the office." 295 U.S. at 631-32, 55 S.Ct. at 875.[5] In *Morrison v. Olson*, the Supreme Court clarified the meaning of the "character of the office" inquiry that courts must undertake in assessing whether Congress has impermissibly restricted the executive branch's authority to remove an appointed official. 487 U.S. 654, 108 S.Ct. 2597, 101 L.Ed.2d

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4. The court's decision in *Borders* rests on other grounds as well. The statute provided for staggered terms for six of the commissioners, which the court stated was evidence of Congress' intent that the members be isolated from political considerations and political changes. 518 F.Supp. at 255. Also, the facts that (1) the District of Columbia is under the exclusive control of Congress, (2) the statute specifically stated that the Commission was meant to remain independent, and (3) the Commission's duty was to nominate judges for the Superior Court of the District of Columbia were relevant to the court's holding. *Id.* at 253-57.

5. The court notes that the federal cases relied upon by the court which address the President's removal authority in the face of limiting Congressional legislation, have been cited by Pennsylvania courts in addressing executive removal authority and separation of powers issues in Pennsylvania. *See Commonwealth v. Sessoms*, 516 Pa. 365, 532 A.2d 775, 784 (1987) (Papadakos, J., concurring); *Daly v. Hemphill*, 411 Pa. 263, 191 A.2d 835, 838-39 (1963); *Bowers v. Pennsylvania Labor Relations Bd.*, 402 Pa. 542, 167 A.2d 480, 484-85 (1961).

569 (1988). The *Morrison* Court was faced with the question of whether the provisions of the Ethics in Government Act impermissibly restricted the Attorney General's ability to remove the independent counsel. In holding that the Act did not unconstitutionally limit removal, the Court stated that the legitimacy of congressional limitations on the chief executive's powers of removal turns upon "whether the removal restrictions are of such a nature that they impede the President's ability to perform his constitutional duty." *Id.* at 690-91, 108 S.Ct. at 2618-20. If the court were to reach this question, it would conclude that the Governor's inability to remove DRPA Commissioners prior to the expiration of their terms would impede his ability to carry out his functions as Chief Executive of the Commonwealth of Pennsylvania.

As Governor, Defendant is charged with ensuring that the laws of the state are "faithfully executed." Pa. Const. art. 2, § 2. Defendant's obligation to ensure the proper functioning of the DRPA is one of the duties charged to him pursuant to the Commonwealth's Constitution.

The DRPA is a public corporate instrumentality of the Commonwealth of Pennsylvania and the State of New Jersey. Compact Art. I. The Third Circuit recently summarized the duties and responsibilities of the DRPA as follows:

> The DRPA was created, among other things, to operate and maintain the bridges owned jointly by Pennsylvania and New Jersey across the Delaware River and between the cities of Philadelphia and Camden. Under the Compact, the DRPA has the authority to construct and maintain facilities for the transportation of passengers, to improve and develop the Port District[6] for port purposes, and to promote commerce on the Delaware River. It may

6. "The Port District includes 'all the territory within the counties of Bucks, Chester, Delaware, Montgomery and Philadelphia in Pennsylvania, and all the territory within the counties of Atlantic, Burlington, Ocean and Salem in New Jersey.' " *Peters v. Delaware River Port Auth.*, 16 F.3d 1346, 1348 n. 2 (3d Cir.1994) (quoting Compact art. XIII), *cert. denied*, — U.S. ——, 115 S.Ct. 62, 130 L.Ed.2d 20 (1994).

> also establish, maintain, and operate a rapid transit system between certain points in New Jersey and Pennsylvania.

Peters v. Delaware River Port Auth., 16 F.3d 1346, 1348 n. 2 (3d Cir.1994), *cert. denied*, — U.S. ——, 115 S.Ct. 62, 130 L.Ed.2d 20 (1994).

Peters involved a claim by the Secretary of the DRPA that the Commission could not remove him from his position solely because he was a member of the New Jersey Republican Party. *Id.* at 1352. The Third Circuit stated the following about the nature and functions of the DRPA:

> The DRPA has broad powers, leaving much room for principled disagreement on policy goals and their implementation.
>
> * * * * * *
>
> The policy and political issues, including economic considerations, arising in an entity such as the DRPA are many. If tolls are raised, bridges fall into disrepair, or traffic is congested, there are surely political consequences. Whether decent roads and transit systems will be made available to all segments of the communities, or will be provided in a manner perceived as favoring some or excluding others, raises important and sensitive social, economic and political questions. The fact that the DRPA is composed of membership from two states does not alter or reduce the likelihood that these matters must be considered and dealt with. *Since the governors of New Jersey and Pennsylvania appoint fourteen of the sixteen member Board of Commissioners, political responsibility for the DRPA's successes and failures can be expected to fall on the ruling administration of each state.*
>
> The district court noted that the DRPA is not designed to further the political agenda of any one state or administration. But it does not follow from this that party affiliation is not appropriate to the effective performance of the higher positions within the DRPA. For example, if a par-

> ticular policy would benefit both New Jersey and Pennsylvania, it would be important for those states to have in place officers who agreed with and furthered that policy. *Obviously, the party affiliation or policy views of the officers in the DRPA could be relevant to the effective presentation and implementation of particular policy goals.* If the states preferred huge increases in spending for the construction of bridges, for example, they might legitimately prefer that high positions in the DRPA not be filled with individuals belonging to a party which advocates decreased government spending.

Id. at 1352-53 (emphasis added). Peters recognizes that it is the member states which select the policy goals to be pursued by the DRPA. *Id.* at 1356 ("[E]ither state alone, or both states working together, might choose to accomplish broad economic goals at the DRPA...."). The foregoing language suggests that an integral aspect of the DRPA's proper functioning is the responsiveness of its members to the administrations of the Commonwealth of Pennsylvania and the State of New Jersey. It is through such responsiveness that the goals of each state are accomplished.[7] In order to ensure such responsiveness, Defendant must be imbued with the authority to remove Pennsylvania's appointed Commissioners.[8]

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7. The Third Circuit's holding in *Peters* that the DRPA is not an arm of either of its member states and can be sued under 42 U.S.C. § 1983 is not inconsistent with the court's conclusion. *See Peters*, 16 F.3d at 1352. The court's determination that the proper functioning of the DRPA depends upon the responsiveness of its Board members to the ruling administrations of both states, does not conflict with the notion that the DRPA as a *body* is not an arm of either the Commonwealth of Pennsylvania or the State of New Jersey.

8. The fact that Pennsylvania's representation on the Commission is comprised exclusively of Executive Department appointees and officials lends support to the conclusion that the DRPA is meant to be responsive to the Executive Branch of the Commonwealth of Pennsylvania. Six of Pennsylvania's eight commissioners are appointed by the Governor, and the remaining two members who serve *ex-officio* are the State Treasurer and the Auditor General, both of whom are officers of the Executive Department. Compact art. II; Pa. Const. art. 3, § 1.

2. *State law*

Since pursuant to federal law, the court has concluded that the terms of the Compact do not prohibit Defendant from removing Plaintiff from his position on the DRPA prior to the expiration of his term, it is appropriate pursuant to *Dyer* and *Petty* to consult state law before reaching a final conclusion.

The removal of state officers in Pennsylvania is governed by the Commonwealth's Constitution which provides that "[a]ppointed civil officers, other than the judges of the courts of record, may be removed at the pleasure of the power by which they shall have been appointed." Pa. Const. art. VI, § 7. In the absence of statutory language providing otherwise this constitutional provision governs the removal of appointed officials. *Watson,* 125 A.2d at 356-57. The legislature, of course, "may impose such terms and limitations with reference to the tenure and removal of an incumbent as it sees fit." *Id.* at 356. The Pennsylvania Supreme Court has held that where a statute provides for fixed terms with staggered expiration dates, the legislature intended that those appointed shall not be removable at the will of the appointing authority. *Id.* at 356-57; *see also Commonwealth ex rel. Sortino v. Singley,* 481 Pa. 367, 392 A.2d 1337 (1978); *Bowers,* 167 A.2d 480; *Commonwealth ex rel. Hanson v. Reitz,* 403 Pa. 434, 170 A.2d 111 (1961). In contrast, the Pennsylvania Supreme Court has held that the fixing of a definite term alone is insufficient to override the dictates of Article VI, § 7 of the Constitution. *See Schluraff v. Rzymek,* 417 Pa. 144, 208 A.2d 239 (1965); *see also Naef v. City of Allentown,* 24 Pa. 597, 227 A.2d 888 (1967); *Commonwealth ex rel. Schofield v. Lindsay,* 330 Pa. 120, 198 A. 635 (1938). The Pennsylvania Supreme Court's holdings on this issue demonstrate that it is the staggering of the terms, not the mere fixing of a definite term in office, which bars removal at will. *Naef,* 227 A.2d at 890; *Schluraff,* 208 A.2d 239.[9] Thus,

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9. Plaintiff contends that interpreting the Compact to permit Defendant to remove him prior to the expiration of his term would render meaningless the language in the Compact which states that six of the Commonwealth's Commissioners "shall be appointed by the Governor of Pennsylvania for terms of five years." He argues that this reading therefore contradicts basic principles of statutory construction which require courts to interpret statutory language in a manner that gives effect to all of its terms.

Article VI § 7 of the Pennsylvania Constitution, as interpreted by the Pennsylvania Supreme Court, provides Defendant with the authority to remove Plaintiff prior to the expiration of his term.

IV. *Conclusion*

The court finds that the terms of the DRPA Compact are silent regarding the removal of members of the DRPA. The language of the Compact providing that the Governor of Pennsylvania shall appoint members of the DRPA for five year terms does not prohibit the Governor from removing a Commissioner prior to the expiration of his or her term. In the absence of statutory language either providing for the means by which members of the DRPA may be removed or limiting the Governor's removal authority, federal law dictates that Defendant may remove Plaintiff prior to the expiration of his term in 1999. This conclusion is also in accordance with Pennsylvania law. Even if the court were to find that the terms of the Compact limited Defendant's removal authority, pursuant to *Morrison* the court would conclude that the Governor's inability to remove DRPA Commissioners prior to the expiration of their terms would impermissibly impede his ability to carry out his functions as Chief Executive of the Commonwealth.

An appropriate order will be issued by the court.

ORDER

In accordance with the foregoing memorandum of law, **IT IS HEREBY ORDERED THAT:**

1. Plaintiff's request for a declaratory judgment that he is entitled, absent misconduct, to remain in his position as a Commissioner of the Delaware River Port Authority until the expiration of his term on December 28, 1999 is **DENIED;**

However, the court's reading of the language of the Compact does not render the term "five years" meaningless if it is read not as a prohibition on the Governor's removal authority, but as a means limiting the length of the term.

2. Plaintiff's request for permanent injunctive relief prohibiting Defendant from removing him prior to the expiration of his term is **DENIED;**

3. The Clerk of Court shall enter judgment in favor of Defendant and against Plaintiff and close the file.

AGREEMENT

BETWEEN THE COMMONWEALTH OF PENNSYLVANIA AND THE STATE OF NEW JERSEY

CREATING THE DELAWARE RIVER JOINT COMMISSION AS A BODY CORPORATE AND POLITIC AND DEFINING ITS POWERS AND DUTIES

Whereas, The Commonwealth of Pennsylvania and the State of New Jersey are the owners of a certain bridge across the Delaware River between the City of Philadelphia in the Commonwealth of Pennsylvania and the City of Camden in the State of New Jersey; and

Whereas, The Pennsylvania Commission, existing by virtue of Act Number Three hundred thirty-eight of the Commonwealth of Pennsylvania, approved July ninth, one thousand nine hundred and nineteen (Pamphlet Laws, eight hundred fourteen), and acts amendatory thereof and supplementary thereto, and the New Jersey Interstate Bridge Commission, existing by virtue of Chapter Two hundred seventy-one of the Laws of New Jersey of one thousand nine hundred and twenty-nine, and acts amendatory thereof and supplementary thereto, are acting jointly under the name of the Delaware River Bridge Joint Commission in connection with the operation and maintenance of said bridge; and

Whereas, The interests of the people of the two States will be best served by consolidating the two commissions in corporate form, and granting additional powers and authority thereto with reference to the said bridge, and to other and further means of communication between the two States in the vicinity of Philadelphia and Camden; and

Whereas, Additional transportation facilities between the two States in the vicinity of Philadelphia and that part of New Jersey opposite thereto will be required in the future for the accommodation of the public and the development of both States; and

Whereas, Both States have mutual interests in the development of the Delaware River from Philadelphia and Camden to the sea, and particularly in developing the facilities and

promoting the more extensive use of the ports of Philadelphia and Camden by coastwise, intercoastal and foreign vessels; and

Whereas, It is highly desirable that there be a single agency of both States empowered to further the aforesaid interests of both States;

Now Therefore, The Commonwealth of Pennsylvania and the State of New Jersey do hereby solemnly covenant and agree each with the other, as follows:

ARTICLE I

The body corporate and politic, heretofore created and known as The Delaware River Joint Commission, hereby is continued under the name of The Delaware River Port Authority (hereinafter in this agreement called the 'commission'), which shall constitute the public corporate instrumentality of the Commonwealth of Pennsylvania and the State of New Jersey for the following public purposes, and which shall be deemed to be exercising an essential governmental function in effectuating such purposes, to wit:

(a) The operation and maintenance of the bridge, owned jointly by the two States, across the Delaware River between the City of Philadelphia in the Commonwealth of Pennsylvania and the City of Camden in the State of New Jersey, including its approaches, and the making of additions and improvements thereto.

(b) The effectuation, establishment, construction, acquisition, operation and maintenance of railroad or other facilities for the transportation of passengers across any bridge or tunnel owned or controlled by the commission, including extensions of such railroad or other facilities necessary for efficient operation in the Port District.

(c) The improvement and development of the Port District for port purposes by or through the acquisition, construction, maintenance or operation of any and all projects for the improvement and development of the Port District for port purposes, or directly related thereto, either directly by purchase, lease or contract, or by lease or agreement with any other public or private body or corporation, or in any other manner.

(d) Cooperation with all other bodies interested or concerned with, or affected by the promotion, development or use of the Delaware River and the Port District.

(e) The procurement from the Government of the United States of any consents which may be requisite to enable any project within its powers to be carried forward.

(f) The construction, acquisition, operation and maintenance of other bridges and tunnels across or under the Delaware River, between the City of Philadelphia or the County of Delaware in the Commonwealth of Pennsylvania, and the State of New Jersey, including approaches, and the making of additions and improvements thereto.

(g) The promotion as a highway of commerce of the Delaware River, and the promotion of increased passenger and freight commerce on the Delaware River and for such purpose the publication of literature and the adoption of any other means as may be deemed appropriate.

(h) To study and make recommendations to the proper authorities for the improvement of terminal, lighterage, wharfage, warehouse and other facilities necessary for the promotion of commerce on the Delaware River.

(i) Institution through its counsel, or such other counsel as it shall designate, or intervention in, any litigation involving rates, preferences, rebates or other matters vital to the interest of the Port District: Provided, That notice of any such institution of or intervention in litigation shall be given promptly to the Attorney General of the Commonwealth of Pennsylvania and to the Attorney General of the State of New Jersey, and provision for such notices shall be made in a resolution authorizing any such intervention or litigation and shall be incorporated in the minutes of the commission.

(j) The establishment, maintenance, rehabilitation, construction and operation of a rapid transit system for the transportation of passengers, express, mail, and baggage, or any of them, between points in New Jersey within the Port District and points in Pennsylvania within the Port District, and intermediate points. Such system may be established either by utilizing existing rapid transit systems, railroad facilities, highways and bridges within the territory involved or by the

construction or provision of new facilities where deemed necessary, and may be established either directly by purchase, lease or contract, or by lease or agreement with any other public or private body or corporation, or in any other manner.

(k) The performance of such other functions which may be of mutual benefit to the Commonwealth of Pennsylvania and the State of New Jersey insofar as concerns the promotion and development of the Port District for port purposes and the use of its facilities by commercial vessels.

(l) The performance or effectuation of such additional bridge, tunnel, railroad, rapid transit, transportation, transportation facility, terminal, terminal facility, and port improvement and development purposes within the Port District as may hereafter be delegated to or imposed upon it by the action of either State concurred in by legislation of the other.

(m) The unification of the ports of the Delaware River through (i) the acquisition or taking control of any terminal, terminal facility, transportation facility or marine terminal or port facility or associated property within the Port District through purchase, lease or otherwise, or by the acquisition, merger, becoming the successor to or entering into contracts, agreements or partnerships with any other port corporation, port authority or port-related entity which is located within the Port District, all in accordance with the applicable laws of the State in which the facility corporation or authority is located; (ii) the exercise of the other powers granted by this compact; or (iii) the establishment (whether solely or jointly with any other entity or entities) of such subsidiary corporation or corporations or maritime or port advisory committees as may be necessary or desirable to effectuate this purpose.

(n) The planning, financing, development, acquisition, construction, purchase, lease, maintenance, marketing, improvement and operation of any project, including, but not limited to, any terminal, terminal facility, transportation facility or any other facility of commerce or economic development activity, from funds available after appropriate allocation for maintenance of bridge and other capital facilities.

ARTICLE II

The commission shall consist of sixteen commissioners, eight resident voters of the Commonwealth of Pennsylvania, and eight resident voters of the State of New Jersey, who shall serve without compensation.

The commissioners for the State of New Jersey shall be appointed by the Governor of New Jersey with the advice and consent of the Senate of New Jersey, for terms of five years, and in case of a vacancy occurring in the office of commissioner during a recess of the Legislature, it may be filled by the Governor by an ad interim appointment, which shall expire at the end of the next regular session of the Senate unless a successor shall be sooner appointed and qualify and, after the end of the session, no ad interim appointment to the same vacancy shall be made unless the Governor shall have submitted to the Senate a nomination to the office during the session and the Senate shall have adjourned without confirming or rejecting it; and no person nominated for any such vacancy shall be eligible for an ad interim appointment to such office if the nomination shall have failed of confirmation by the Senate.

Six of the eight commissioners for the Commonwealth of Pennsylvania shall be appointed by the Governor of Pennsylvania for terms of five years. The Auditor General and the State Treasurer of said Commonwealth shall, ex-officio, be commissioners for said Commonwealth, each having the privilege of appointing a representative to serve in his place at any meeting of the commission which he does not attend personally.

Any commissioner who is an elected public official shall have the privilege of appointing a representative to serve and act in his place at any meeting of the commission which he does not attend personally.

All commissioners shall continue to hold office after the expiration of the terms for which they are appointed or elected until their respective successors are appointed and qualify, but no period during which any commissioner shall

hold over shall be deemed to be an extension of his term of office for the purpose of computing the date on which his successor's term expires.

ARTICLE III

The commissioners shall have charge of the commission's property and affairs, and shall, for the purpose of doing business, constitute a board, but no action of the commissioners shall be binding unless a majority of the members of the commission from Pennsylvania and a majority of the members of the commission from New Jersey shall vote in favor thereof.

Notwithstanding the above, each State reserves the right to provide by law for the exercise of a veto power by the Governor of that State over any action of any commissioner from that State at any time within ten days (Saturdays, Sundays and public holidays in the particular state except) after receipt at the Governor's office of a certified copy of the minutes of the meeting at which such vote was taken. Each State may provide by law for the manner of delivery of such minutes and for notification of the action thereon.

ARTICLE IV

For the effectuation of its authorized purposes, the commission is hereby granted the following powers:

(a) To have perpetual succession;

(b) To sue and be sued;

(c) To adopt and use an official seal;

(d) To elect a chairman, vice-chairman, secretary and treasurer, and to adopt suitable by-laws for the management of its affairs. The secretary and treasurer need not be members of the commission.

(e) To appoint, hire or employ counsel and such other officers, and such agents and employees, as it may require for the performance of its duties, by contract or otherwise, and fix and determine their qualifications, duties and compensation;

(f) To enter into contracts;

(g) To acquire, own, hire, use, operate and dispose of personal property;

(h) To acquire, own, use, lease, operate, mortgage and dispose of real property and interests in real property, and to make improvements thereon;

(h.1) At its option, it may authorize the Department of Property and Supplies to prescribe standards and specifications and make contracts and purchases of various materials and services for the commission, pursuant to the provisions of sections 2403, 2403.1 and 2409 of the act of April 9, 1929 (P.L. 177), known as "The Administrative Code of 1929."

(i) To grant by franchise, lease or otherwise, the use of any property or facility owned or controlled by the commission and to make charges therefor;

(j) To borrow money upon its bonds or other obligations, either with or without security, and to make, enter into and perform any and all such covenants and agreements with the holders of such bonds or other obligations as the commission may determine to be necessary or desirable for the security and payment thereof, including, without limitation of the foregoing, covenants and agreements as to the management and operation of any property or facility owned or controlled by it, the tolls, rents, rates or other charges to be established, levied, made and collected for any use of any such property or facility, or the application, use and disposition of the proceeds of any bonds or other obligations of the commission, or the proceeds of any such tolls, rents, rates or other charges or any other revenues or moneys of the commission;

(k) To exercise the right of eminent domain within the Port District;

(l) To determine the exact location, system and character of, and all other matters in connection with, any and all improvements or facilities which it may be authorized to own, construct, establish, effectuate, operate or control;

(m) In addition to the foregoing, to exercise the powers, duties, authority and jurisdiction heretofore conferred and imposed upon the aforesaid The Delaware River Joint Commission by the Commonwealth of Pennsylvania or the State of New Jersey, or both of the said two States;

(n) To exercise all other powers, not inconsistent with the constitutions of the two States or of the United States, which

may be reasonably necessary or incidental to the effectuation of its authorized purposes or to the exercise of any of the foregoing powers, except the power to levy taxes or assessments; and generally to exercise, in connection with its property and affairs and in connection with property within its control, any and all powers which might be exercised by a natural person or a private corporation in connection with similar property and affairs;

(o) To acquire, purchase, construct, lease, operate, maintain and undertake any project, including any terminal, terminal facility, transportation facility, or any other facility of commerce, and to make charges for the use thereof;

(p) To make expenditures anywhere in the United States and foreign countries, to pay commissions, and hire or contract with experts or consultants, and otherwise to do indirectly anything which the commission may do directly.

(q) To establish one or more operating divisions as deemed necessary to exercise the power and effectuate the purposes of this agreement.

The commission shall also have such additional powers as may hereafter be delegated to or imposed upon it from time to time by the action of either State concurred in by legislation of the other.

It is the policy and intent of the Legislatures of the Commonwealth of Pennsylvania and the State of New Jersey that the powers granted by this Article shall be so exercised that the American system of free competitive private enterprise is given full consideration and is maintained and furthered. In making its reports and recommendations to the Legislatures of the Commonwealth of Pennsylvania and the State of New Jersey on the need for any facility or project which the commission believes should be undertaken for the promotion and development of the Port District, the commission shall include therein its findings which fully set forth that the facility or facilities operated by private enterprise within the Port District and which it is intended shall be supplanted or added to are not adequate.

ARTICLE V

If for any of its authorized purposes (including temporary construction purposes), the commission shall find it necessary or convenient to acquire any real property in the Commonwealth of Pennsylvania or the State of New Jersey, whether for immediate or future use, the commission may find and determine that such property, whether a fee simple absolute or a lesser interest, is required for public use, and, upon such determination, the said property shall be deemed to be required for a public use until otherwise determined by the commission, and, with the exceptions hereinafter specifically noted, the said determination shall not be affected by the fact that such property has theretofore been taken for or is then devoted to a public use, but the public use in the hands or under the control of the commission shall be deemed superior to the public use in the hands or under the control of any other person, association or corporation.

If the commission is unable to agree with the owner or owners thereof upon terms for the acquisition of any such real property in the Commonwealth of Pennsylvania for any reason whatsoever, then the commission may acquire such real property in the manner provided by Act Number Three hundred and thirty- eight of the Commonwealth of Pennsylvania, approved July ninth, one thousand nine hundred and nineteen, and acts amendatory thereof and supplementary thereto, for the acquisition of real property by the aforesaid Pennsylvania Commission.

If the commission is unable to agree with the owner or owners thereof upon terms for the acquisition of any such real property in the State of New Jersey for any reason whatsoever, then the commission may acquire and is hereby authorized to acquire such property, whether a fee simple absolute or a lesser interest, by condemnation or the exercise of the right of eminent domain, either under and pursuant to the provisions of the act of the State of New Jersey, entitled "An act to regulate the ascertainment and payment of compensation for property condemned or taken for public use." (Revision of one thousand nine hundred, approved March twentieth, one thousand nine hundred) and acts amendatory thereof

and supplementary thereto, or under and pursuant to the provisions of an act, entitled "An act concerning and regulating acquisition and taking of lands by the State of New Jersey, or any agency thereof; providing a procedure therefor, and the manner of making compensation for lands so taken," approved April twenty-first, one thousand nine hundred and twenty, and the various acts amendatory thereof and supplementary thereto.

The power of the commission to acquire real property by condemnation or the exercise of the power of eminent domain in the Commonwealth of Pennsylvania and the State of New Jersey shall be a continuing power and no exercise thereof shall be deemed to exhaust it.

The commission and its duly authorized agents and employees may enter upon any land in the Commonwealth of Pennsylvania or the State of New Jersey, for the purpose of making such surveys, maps or other examinations thereof, as it may deem necessary or convenient for its authorized purposes.

However, anything to the contrary contained in this compact notwithstanding, no property now or hereafter vested in or held by any county, city, borough, village, township or other municipality or port district shall be taken by the commission without the consent of such municipality or port district unless expressly authorized so to do by the Commonwealth or State in which such municipality or port district is located. All counties, cities, boroughs, villages, townships and other municipalities, and all public agencies and commissions of the Commonwealth of Pennsylvania and the State of New Jersey, notwithstanding any contrary provision of law, are hereby authorized and empowered to grant and convey to the commission upon its request, but not otherwise, upon reasonable terms and conditions, any real property which may be necessary or convenient to the effectuation of its authorized purposes, including real property already devoted to public use.

The Commonwealth of Pennsylvania and the State of New Jersey hereby consent to the use and occupation by the commission of any real property of the said two States, or of either of them, which may be or become necessary or conve-

nient to the effectuation of the authorized purposes of the commission, including lands lying under water and lands already devoted to public use.

The term "real property," as used in this compact, includes lands, structures, franchises, and interests in land, including lands under water and riparian rights, and any and all things and rights usually included within the said term, and includes not only fees simple absolute but also any and all lesser interests such as easements, rights of way, uses, leases, licenses and all other incorporeal hereditaments, and every estate, interest or right, legal or equitable, including terms of years and liens thereon by way of judgments, mortgages or otherwise, and also claims for damage to real estate.

ARTICLE VI

The control, operation, tolls and other revenues of the aforesaid existing bridge across the Delaware River between the City of Philadelphia and the City of Camden, and of all real and personal property appurtenant thereto or used in connection therewith, shall vest in the commission on the first day of July, one thousand nine hundred and thirty-one, and the terms of the members of the aforesaid Pennsylvania Commission and the aforesaid New Jersey Interstate Bridge Commission shall cease and terminate on that date.

On or before the thirtieth day of June, one thousand nine hundred and thirty- two, or as soon thereafter as practicable, the commission shall pay to the Commonwealth of Pennsylvania, the State of New Jersey, and the City of Philadelphia the following sums out of moneys, raised by said commission on its bonds or other obligations:

(a) An amount equal to the moneys contributed by the Commonwealth of Pennsylvania toward the cost of acquiring property for and constructing said bridge and the approaches thereto, and expenditures incident thereto, with interest at the rate of four per centum per annum, such interest to be computed from the dates on which installments of such funds were paid to the Delaware River Bridge Joint Commission by the said Commonwealth of Pennsylvania, as shown by the records

of its State Treasurer, less, however, the amount returned to the Commonwealth of Pennsylvania from the net revenues of the bridge between July first, one thousand nine hundred and twenty-six, and June thirtieth, one thousand nine hundred and thirty-one, and less interest, at the rate of four per centum per annum, upon such amount computed from the dates of repayment to the Commonwealth of Pennsylvania;

(b) An amount equal to the moneys contributed by the State of New Jersey toward the cost of acquiring property for and constructing said bridge and the approaches thereto, and expenditures incident thereto, with interest theretofore actually paid by the State of New Jersey or accrued upon the bonds issued by said State to borrow money to pay its share of the cost of acquiring property for and construction of said bridge and approaches thereto, and all expenditures incident thereto, less, however, the amount returned to the State of New Jersey from the net revenues of the bridge between July first, one thousand nine hundred and twenty-six, and June thirtieth, one thousand nine hundred and thirty-one, and less interest, at the rate of four and one-fourth per centum per annum, upon such amount computed from the dates of repayment to the State of New Jersey;

(c) An amount equal to the moneys contributed by the City of Philadelphia toward the cost of acquiring property for and constructing said bridge and the approaches thereto, and expenditures incident thereto, with interest theretofore actually paid by the City of Philadelphia or accrued upon the bonds issued by said city to borrow money to pay its share of the cost of acquiring property for and construction of said bridge and approaches thereto, and all expenditures incident thereto, less, however, the amount returned to the City of Philadelphia from the net revenues of the bridge between July first, one thousand nine hundred and twenty-six, and June thirtieth, one thousand nine hundred and thirty-one, and less interest, at the rate of four and one-fourth per centum per annum, upon such amount computed from the dates of repayment to the City of Philadelphia;

(d) As soon as is practicable subsequently to July first, one thousand nine hundred and thirty-one, the commission

shall determine with the Commonwealth of Pennsylvania, the State of New Jersey, and the City of Philadelphia the net amounts due to each, respectively, as of the first day of July, one thousand nine hundred and thirty-one, and from that date until the date of payment, interest shall be paid by the commission to the Commonwealth of Pennsylvania at the rate of four per centum per annum and the State of New Jersey and the City of Philadelphia at the rate of four and one-fourth per centum per annum.

(e) The amount payable by the commission to the Commonwealth of Pennsylvania, as aforesaid, shall be paid to the State Treasurer of the Commonwealth of Pennsylvania upon a voucher signed and audited by said State Treasurer, who is hereby authorized to consummate the said transaction. The amount payable to the State of New Jersey shall be paid to the Comptroller of said State upon a voucher signed and audited by said Comptroller, who is hereby authorized to consummate the said transaction. The amount payable to the City of Philadelphia shall be paid to the treasurer of the said city upon a voucher signed and audited by said treasurer, who is hereby authorized to consummate the said transaction. Upon the receipt of the proper payment, each of said officials shall certify to The Delaware River Joint Commission that all moneys payable by The Delaware River Joint Commission to the Commonwealth, State or city, as the case may be, have been duly paid;

(f) Nothing herein contained shall be construed to affect, diminish or impair the rights and obligations created by, or to repeal any of the provisions of, Chapter Three hundred and fifty-two of the Laws of New Jersey of one thousand nine hundred and twenty, and Chapter Two hundred and sixty-two of the Laws of New Jersey of one thousand nine hundred and twenty-four, and Chapter Three hundred and thirty-six of the Laws of New Jersey of one thousand nine hundred and twenty-six, and Chapter Thirty-three of the Laws of New Jersey of one thousand nine hundred and twenty-seven, and Chapter Sixty-four of the Laws of New Jersey of one thousand nine hundred and twenty- eight.

(g) Of the money paid to the State of New Jersey under the provisions of this agreement, there shall be paid to the Sinking Fund Commission, created by the provisions of the foregoing statutes, such sum or sums as said Sinking Fund Commission may deem necessary to meet the then existing indebtedness and obligations set forth in said statutes, together with such interest and other charges as may be due or may grow due. The amount thus to be paid to the Sinking Fund Commission shall be arrived at and determined by said Sinking Fund Commission within ninety days after payment is made to the State of New Jersey pursuant to the provisions of this agreement. The moneys to be paid to and received by said Sinking Fund Commission are hereby appropriated by the State of New Jersey and are to be used for sinking fund purposes according to law.

(h) No failure on the part of the commission to make the aforesaid payments to the Commonwealth of Pennsylvania, to the State of New Jersey, or to the city of Philadelphia, shall affect, diminish or impair the rights of the holders of any bonds or other securities or obligations of said commission, as security for which the tolls and other revenues of the said bridge may be pledged.

ARTICLE VII

Notwithstanding any provision of this agreement, the commission shall have no power to pledge the credit of the Commonwealth of Pennsylvania, or the credit of the State of New Jersey, or the credit of any county, city, borough, village, township or other municipality of said Commonwealth or of said State, or to create any debt of said Commonwealth or of said State or of such municipality.

ARTICLE VIII

The commission is hereby authorized to make and enforce such rules and regulations, and to establish, levy and collect (or to authorize by contract, franchise, lease or otherwise, the establishment, levying and collection of) such tolls, rents, rates, and other charges in connection with the aforesaid

existing bridge across the Delaware River and any other properties which it may hereafter construct, erect, acquire, own, operate or control, as it may deem necessary, proper, desirable and reasonable, which said tolls, rents, rates, and other charges shall be at least sufficient to meet the expenses thereof, including interest and sinking fund charges; and the commission is hereby authorized and empowered to pledge such tolls, rates, rents, and other revenues, or any part thereof, either presently received or to be received in the future, or both, as security of the repayment, with interest, of any moneys, borrowed by it or advanced to it for any of its authorized purposes and as security for the satisfaction of any other obligation assumed by it in connection with such loans or advances.

ARTICLE IX

The Commonwealth of Pennsylvania and the State of New Jersey hereby covenant and agree with each other and with the holders of any bonds or other securities or obligations of the commission for which there may or shall be pledged the tolls, rents, rates, or other revenues, or any part thereof, of any property or facility owned, operated or controlled by the commission (including the said bridge across the Delaware River and the facilities for the transportation of passengers across the said bridge), that (so long as any of said bonds or other securities or obligations remain outstanding and unpaid, and unless and until adequate provision is made by law for the protection of those advancing money upon such obligations) the Commonwealth and the said State will not diminish or impair the power of the commission to own, operate or control said properties and facilities, or to establish, levy and collect tolls, rents, rates and other charges in connection with such properties or facilities.

The Commonwealth of Pennsylvania and the State of New Jersey hereby covenant and agree with each other and with the holders of any bonds or other securities or obligations of the commission for which the tolls, rents, rates or other revenues, or any part thereof, of the aforesaid existing bridge

across the Delaware River shall have been pledged, that the said Commonwealth and the said State will not authorize, or permit the authorization of, the construction, operation or maintenance of any additional vehicular bridge or tunnel or any additional bridge or tunnel having railroad or other facilities for the transportation of passengers between the said Commonwealth and the said State over or under the Delaware River by any other person or body, than the commission, within a distance of ten miles in either direction from the said bridge measured along the boundary line between the said Commonwealth and the said State.

ARTICLE X

The bonds or other securities or obligations which may be issued by the commission for any of its authorized purposes, and as security for which there may be pledged the tolls, rents, rates and other revenues, or any part thereof, of any properties or facilities owned, operated or controlled by the commission (including the aforesaid existing bridge across the Delaware River and the aforesaid facilities for the transportation of passengers across the said bridge), are hereby made securities in which all state and municipal officers and bodies of the Commonwealth of Pennsylvania and State of New Jersey, all banks, bankers, trust companies, savings banks, saving and loan associations, investment companies, and other persons carrying on a banking business, all insurance companies, insurance associations, and other persons carrying on an insurance business, and all administrators, executors, guardians, trustees and other fiduciaries, and all other persons whatsoever, who now or may hereafter be authorized to invest in bonds or other obligations of the Commonwealth of Pennsylvania or of the State of New Jersey, may properly and legally invest any funds, including capital belonging to them or within their control, and said bonds or other securities or obligations are hereby made securities which may properly and legally be deposited with and received by any state or municipal officer or agency of the Commonwealth of Pennsylvania or the State of New Jersey for any purpose for which the deposit of bonds

or other obligations, either of the Commonwealth or of the State, is now or may hereafter be authorized.

ARTICLE XI

The effectuation of its authorized purposes by the commission is and will be in all respects for the benefit of the people of the Commonwealth of Pennsylvania and the State of New Jersey, for the increase of their commerce and prosperity and for the improvement of their health and living conditions, and since the commission will be performing essential governmental functions in effectuating said purposes, the commission shall not be required to pay any taxes or assessments upon any property acquired or used by it for such purposes; and the bonds or other securities or obligations issued by the commission, their transfer and the income therefrom (including any profits made on the sale thereof), shall, at all times, be free from taxation within the Commonwealth of Pennsylvania and the State of New Jersey.

To the end that municipalities may not suffer undue loss of tax revenue by reason of the acquisition and ownership of property therein by the commission, the commission is hereby authorized and empowered, in its discretion, to enter into a voluntary agreement or agreements with any municipality, whereby it will undertake to pay a fair and reasonable sum or sums to compensate the said municipality for any loss of tax revenue in connection with any property acquired by the commission after 1950, other than property acquired for bridge, tunnel or passenger transportation purposes. Any such payment or payments which the commission is hereby authorized and empowered to make may be made on an annual basis, in which case the payment or payments shall not be in excess of the amount of the taxes upon the property when last assessed prior to the time of its acquisition by the commission, or such payment or payments may be made in a lump sum or sums, or over a stated period of years, as shall be agreed upon by and between the commission and such municipality. Every municipality wherein the property shall be acquired by the commission is authorized and empowered to enter into such agree-

ment or agreements with the commission to accept the payment or payments which the commission is herein authorized and empowered to make.

ARTICLE XII

The commission shall, within ninety days after the end of each fiscal year, submit to the Governors and Legislatures of the Commonwealth of Pennsylvania and the State of New Jersey a complete and detailed report of the following:

(1) its operations and accomplishments during the completed fiscal year;

(2) its receipts and disbursements or revenues and expenses during that year in accordance with the categories and classifications established by the commission for its own operating and capital outlay purposes;

(3) its assets and liabilities at the end of the fiscal year, including the status or reserve, depreciation, special or other funds, including debits and credits of these funds;

(4) a schedule of bonds and notes outstanding at the end of the fiscal year;

(5) a list of all contracts exceeding $100,000 entered into during the fiscal year;

(6) a business or strategic plan for the commission and for each of its operating divisions; and

(7) a five-year capital plan.

Not less than once every five years the commission shall cause a management audit of its operational effectiveness and efficiency to be conducted by an independent consulting firm selected by the commission. The first management audit to be conducted shall commence within three years of the date of coming into force of the supplemental compact or agreement authorized by this 1992 amendatory act. This audit is in addition to any other audit which the commission determines to conduct from time to time.

The commission shall, not later than two years after the date of the coming into force of the supplemental compact or agreement authorized by this 1992 amendatory act, prepare a comprehensive master plan for the development of the Port

District. The plan shall include, but not be limited to, plans for the construction, financing, development, reconstruction, purchase, lease, improvement and operation of any terminal, terminal facility, transportation facility or any other facility of commerce or economic development activity. The master plan shall include the general location of such projects and facilities as may be included in the master plan and shall to the maximum extent practicable include, but not be limited to, a general description of each such projects and facilities, the land use requirements necessary therefor and estimates of project costs and of a schedule for commencement of each such project. Prior to adopting such master plan, the commission shall give written notice to, afford a reasonable opportunity for comment, consult with and consider any recommendations from State, county and municipal government, as well as commissions, public corporations and authorities and the private sector. The commission may modify or change any part of the plan in the same form and manner as provided for the adoption of the original plan. At the time the commission authorizes any project or facility, the commission shall promptly provide to the Governor and Legislature of each state a detailed report on the project, including its status within the master plan. The commission shall include within the authorization a status of the project or facility in the master plan and any amendment thereof, and no project shall be authorized if not included in the master plan or amendment thereof. Any project which has been commenced and approved by the commission prior to the adoption of the master plan shall be included, for informational purposes only, in the master plan. The commission shall provide notice of such ongoing projects to those State, county and municipal governments, as well as entities in the private sector who would be entitled to such notice had the project not been commenced in anticipation of adopting the master plan, but there shall be no requirement that the project be delayed or deferred due to those provisions.

In addition to other powers conferred upon it, and not in limitation thereof, the commission may acquire all right, title and interest in and to the Tacony-Palmyra Bridge, across the

Delaware River at Palmyra, New Jersey, together with any approaches and interests in real property necessary thereto. The acquisition of such bridge, approaches and interests by the commission shall be by purchase or by condemnation in accordance with the provisions of the Federal law consenting to or authorizing the construction of such bridge or approaches, or the acquisition of such bridge, approaches or interests by the commission shall be pursuant to and in accordance with the provisions of sections 48:5-22 and 48:5-23 of the Revised Statutes of New Jersey, and for all the purposes of said provisions and sections the commission is hereby appointed as the agency of the State of New Jersey and the Commonwealth of Pennsylvania exercising the rights and powers granted or reserved by said Federal law or sections to the State of New Jersey and Commonwealth of Pennsylvania jointly or to the State of New Jersey acting in conjunction with the Commonwealth of Pennsylvania. The commission shall have authority to so acquire such bridge, approaches and interests, whether the same be owned, held, operated or maintained by any private person, firm, partnership, company, association or corporation or by any instrumentality, public body, commission, public agency or political subdivision (including any county or municipality) of, or created by or in, the State of New Jersey or the Commonwealth of Pennsylvania, or by any instrumentality, public body, commission or public agency of, or created by or in, a political subdivision (including any county or municipality) of the State of New Jersey or the Commonwealth of Pennsylvania. None of the provisions of the preceding paragraph shall be applicable with respect to the acquisition by the commission, pursuant to this paragraph, of said Tacony-Palmyra Bridge, approaches and interests. The power and authority herein granted to the commission to acquire said Tacony-Palmyra Bridge, approaches and interests shall not be exercised unless and until the Governor of the State of New Jersey and the Governor of the Commonwealth of Pennsylvania have filed with the commission their written consents to such acquisition.

Notwithstanding any provision of this agreement, nothing herein contained shall be construed to limit or impair any

right or power granted or to be granted to the Pennsylvania Turnpike Commission or the New Jersey Turnpike Authority, to finance, construct, operate and maintain the Pennsylvania Turnpike System or any turnpike project of the New Jersey Turnpike Authority, respectively, throughout the Port District, including the right and power, acting alone or in conjunction with each other, to provide for the financing, construction, operation and maintenance of one bridge across the Delaware River south of the City of Trenton in the State of New Jersey: Provided, That such bridge shall not be constructed within a distance of ten miles, measured along the boundary line between the Commonwealth of Pennsylvania and the State of New Jersey, from the existing bridge, operated and maintained by the commission, across the Delaware River between the City of Philadelphia in the Commonwealth of Pennsylvania and the City of Camden in the State of New Jersey, so long as there are any outstanding bonds or other securities or obligations of the commission for which the tolls, rents, rates, or other revenues, or any part thereof, of said existing bridge shall have been pledged. Nothing contained in this agreement shall be construed to authorize the commission to condemn any such bridge.

Anything herein contained to the contrary notwithstanding, no bridge or tunnel shall be constructed, acquired, operated or maintained by the commission across or under the Delaware River north of the boundary line between Bucks County and Philadelphia County in the Commonwealth of Pennsylvania as extended across the Delaware River to the New Jersey shore of said river, and any new bridge or tunnel authorized by or pursuant to this compact or agreement to be constructed or erected by the commission may be constructed or erected at any location south of said boundary line notwithstanding the terms and provisions of any other agreement between the Commonwealth of Pennsylvania and the State of New Jersey. Except as may hereafter be otherwise provided in conformity with Article IX hereof with respect to specific properties designated by action of the Legislatures of both of the signatory States, no property or facility owned or con-

trolled by the commission shall be acquired from it by any exercise of powers of condemnation or eminent domain.

ARTICLE XII-A

(1) In addition to other public purposes provided for it and other powers and duties conferred upon it and not in limitation thereof, and notwithstanding the provisions of any other Article hereof, The Delaware River Joint Commission, by whatever name said Commission may be designated, shall have among its authorized purposes and it shall have the power and duty to effectuate, the construction, operation and maintenance of a bridge for vehicular traffic across the Delaware River, between a point or points within a one mile radius of Morgan Street and Broadway in the City of Camden, New Jersey, and a point or points within a one mile radius of Oregon Avenue and Swanson Street in the City of Philadelphia, Pennsylvania, with such approaches thereto and highway connections as may be necessary or desirable, or, in lieu of such bridge, a tunnel or tunnels for vehicular traffic under the Delaware River, between a point or points within a one mile radius of Morgan Street and Broadway in the City of Camden, New Jersey, and a point or points within a one mile radius of Oregon Avenue and Swanson Street in the City of Philadelphia, Pennsylvania, with such approaches thereto and highway connections as may be necessary or desirable.

(2) For the effectuation of any of its purposes authorized by this Article, the Commission is hereby granted, in addition to any other powers heretofore or hereafter granted to it, power and authority to acquire, in its name, by purchase or otherwise, on such terms and conditions and in such manner as it may deem proper, or by the exercise of the power of eminent domain, any land and other property which it may determine is reasonably necessary for the bridge or tunnel referred to in this Article or for the construction of such approaches thereto or highway connections as the Commission shall deem necessary, and any and all rights, title and interest in such land and other property, including public lands, parks, playgrounds, reservations, highways or parkways, owned by or in which any

county, city, borough, town, township, village or other political subdivision of the State of New Jersey or the Commonwealth of Pennsylvania has any right, title or interest, or parts thereof or rights therein, and any fee simple absolute or any lesser interest in private property, and any fee simple absolute in easements upon, or the benefit of restrictions upon, abutting property, to preserve and protect such bridge or tunnel, the approaches thereto or highway connections. Upon the exercise of the power of eminent domain under this paragraph, the compensation to be paid, with regard to property located in the State of New Jersey, shall be ascertained and paid in the manner provided in chapter one of Title 20 of the Revised Statutes of New Jersey, in so far as the provisions thereof are applicable and not inconsistent with the provisions contained in this paragraph, and with regard to property located in the Commonwealth of Pennsylvania, shall be ascertained and paid in the manner provided by any applicable condemnation law in force in such Commonwealth. The Commission may join in separate subdivisions, in one petition or complaint, the descriptions of any number of tracts or parcels of land or property to be condemned, and the names of any number of owners and other parties who may have an interest therein, and all such land or property included in said petition or complaint may be condemned in a single proceeding: Provided, however, That separate awards shall be made for each tract or parcel of land or property: And provided further, That each of said tracts or parcels of land or property lies wholly in, or has a substantial part of its value lying wholly within, the same county.

(3) For the effectuation of any of its authorized purposes, the Commission is hereby granted the following powers, in addition to any other powers heretofore or hereafter granted to it:

(a) In connection with the borrowing of money upon its bonds or other obligations, to make, enter into and perform any and all such covenants and agreements with the holders of such bonds or other obligations, as the Commission may determine to be necessary or desirable for the security and payment thereof, including, without limitation of the forego-

ing covenants and agreements as to the management and operation of any property or facility owned or controlled by it, the tolls, rents, rates or other charges to be established, levied, made and collected for any use of any such property or facility, or the application, use and disposition of the proceeds of any bonds or other obligations of the Commission, or the proceeds of any such tolls, rents, rates or other charges, or any other revenues or moneys of the Commission.

(b) To pledge, for the security or payment of any bonds or other obligations of the Commission, any moneys of the Commission, either presently received or in hand or to be received in the future, or both.

(c) To make expenditures, anywhere in the United States and foreign countries, to pay commission, and hire or contract with experts and consultants, and otherwise to do indirectly anything which the Commission may do directly.

(d) To have and exercise such additional powers as may hereafter be delegated to or imposed upon it from time to time by act of the Legislature of either signatory state, concurred in by act of the Legislature of the other.

(4) Notwithstanding any of the provisions of this Article, the Commission shall not, in connection with the bridge or tunnel referred to in this Article, construct any approach or highway connection in the Commonwealth of Pennsylvania, unless and until the Department of Highways of said Commonwealth shall have filed with the Commission its written consent to such construction, and the Commission shall not, in connection with said bridge or tunnel, construct any approach or highway connection in the State of New Jersey, unless and until the State Highway Department of said State shall have filed with the Commission its written consent to such construction. As used in this paragraph, the term "approach" or "highway connection" means and includes any highway, road or structure for passage of vehicles located inland of any of the established bulkhead lines of the Delaware River, including any highway, road or structure for passage of vehicles necessary to create access to the bridge or tunnel referred to in this Article, or to connect such bridge or tunnel with a highway

system or other traffic facilities, or necessary to facilitate the flow of traffic in the vicinity of such bridge or tunnel.

(5) Before commencing construction of the bridge or tunnel referred to in this Article, the Commission shall set aside, in a special reserve fund to be held by it, the sum of twenty-two million dollars ($22,000,000), or such lesser sum as the Governors of the signatory states may, in writing, approve as sufficient for the purposes of this paragraph. The moneys in said special reserve fund may be expended and used by the Commission for the construction, maintenance and operation of approaches and highway connections, and no moneys in said fund shall be applied to any purpose except

(1) such construction, maintenance or operation,

(2) temporary investment pending some other authorized application, or

(3) any other purpose authorized by the Commission and approved in writing by the Governors of the signatory states. The Governors for the time being of the signatory states are authorized from time to time to make and sign any and all approvals contemplated by this paragraph, and any such approvals so made and signed by both Governors shall be binding upon the signatory states and the said Governors and their successors, and shall not be revoked or amended except with the consent of the Commission.

(6) Any pledge of tolls, rates, rents or revenues, or any part thereof, or of any moneys of the Commission, made or created by the Commission pursuant to Article VIII or any other provision hereof, shall be valid and binding from the time when the pledge is made; the revenues or other moneys so pledged and thereafter received by the Commission shall immediately be subject to the lien of such pledge, without any physical delivery thereof or further act; the lien of any such pledge shall be valid and binding as against all parties having claims of any kind, in tort, contract or otherwise, against the Commission, irrespective of whether such parties have notice thereof, and neither the resolution nor any other instrument by which such a pledge is created need be filed or recorded, except in the records of the Commission.

(7) The effectuation of any of the purposes authorized by this Article, and the exercise or performance by the Commission of any of its powers or duties in connection with effectuation of such purpose, shall not be subject to any restrictions, limitations or provisions provided for or set forth in Article XII hereof. The bridge or tunnel referred to in this Article may be constructed or erected by the Commission, notwithstanding the terms and provisions of any other agreement between the Commonwealth of Pennsylvania and the State of New Jersey. Except as may hereafter be otherwise provided in conformity with Article IX hereof, with respect to specific properties designated by action of the Legislatures of both of the signatory states, no property or facility owned or controlled by the Commission shall be acquired from it by any exercise of powers of condemnation or eminent domain.

(8) The Commission shall not construct or erect the bridge or tunnel referred to in this Article, unless and until the Governor of the State of New Jersey and the Governor of the Commonwealth of Pennsylvania shall have filed with the Commission their written consents to such construction or erection.

ARTICLE XII-B

(1) In addition to other public purposes provided for it and other powers and duties conferred upon it, and not in limitation thereof, and notwithstanding the provisions of any other article hereof, the Commission shall have among its authorized purposes, and it shall have the power to effectuate, the construction, operation and maintenance of a bridge for vehicular traffic across the Delaware River, between a point or points in the Township of Logan, New Jersey, and a point or points in the City of Chester, Pennsylvania, including approaches thereto.

(2) In addition to other public purposes provided for it and other powers and duties conferred upon it, and not in limitation thereof, and notwithstanding the provisions of any other article hereof, the Commission shall have among its authorized purposes, and it shall have the power to effectuate,

the establishment, rehabilitation, equipment, construction, maintenance and operation of ferries for passengers and vehicular traffic over and across the Delaware River within the Port District between the Commonwealth of Pennsylvania and the State of New Jersey. Such ferries may be established either directly by purchase, lease or contract, or by lease or agreement with any other public or private body or corporation, or in any other manner, and may be established by utilizing any existing ferries within the Port District across the Delaware River between said Commonwealth and said State and by the construction or provision of new facilities where deemed necessary. Any such ferry may include such approach highways and interests in land or other property necessary therefor, in the Commonwealth of Pennsylvania or the State of New Jersey, as may be determined by the Commission to be necessary to facilitate the flow of traffic in the vicinity of any such ferry, or to connect any such ferry with the highway system or other traffic facilities in said Commonwealth or said State.

(3)(a) For the effectuation of any of its purposes authorized by this article, the Commission is hereby granted, in addition to any other powers heretofore or hereafter granted to it, power and authority to acquire in its name by purchase or otherwise, on such terms and conditions and in such manner as it may deem proper, or by the exercise of the power of eminent domain, any such land and other property which it may determine is reasonably necessary to acquire for any of its purposes authorized by this article, and any and all rights, title and interest in such land and other property, including public lands, parks, playgrounds, reservations, highways, or parkways, owned by or in which any county, city, borough, town, township, village, or other political subdivision of the State of New Jersey or the Commonwealth of Pennsylvania has any right, title or interest, or parts thereof or rights therein, and any fee simple absolute or any lesser interest in private property, and any fee simple absolute in, easements upon, or the benefit of restrictions upon, abutting property to preserve and protect such land and other property. Upon the exercise of the power of eminent domain under this para-

graph, the compensation to be paid with regard to property located in the State of New Jersey shall be ascertained and paid in the manner provided in Title 20 of the Revised Statutes of New Jersey insofar as the provisions thereof are applicable and not inconsistent with the provisions contained in this paragraph, and with regard to property located in the Commonwealth of Pennsylvania shall be ascertained and paid in the manner provided by the act approved the ninth day of July, one thousand nine hundred nineteen (Pamphlet Laws 814) and acts amendatory thereof and supplementary thereto, insofar as the provisions are applicable and not inconsistent with the provisions contained in this paragraph. The Commission may join in separate subdivisions in one petition or complaint the descriptions of any number of tracts or parcels of such land and other property to be condemned, and the names of any number of owners and other parties who may have an interest therein, and all such land and other property included in said petition or complaint may be condemned in a single proceeding: Provided, however, That separate awards shall be made for each tract or parcel of such land or other property: And provided further, That each of said tracts or parcels of such land or other property lies wholly in or has a substantial part of its value lying wholly within the same county.

(b) Whenever the Commission acquires under this paragraph (3) the whole or any part of the right of way of a public utility located in the Commonwealth of Pennsylvania, the Commission shall, at its own expense, provide a substitute right of way on another and favorable location. Such public utility shall thereupon provide for the transfer to, or reconstruction upon, in, under or above said substitute right of way of any structures and facilities of said public utility located upon, in, under or above said original right of way at the time the same is so acquired. The Commission is hereby authorized to enter into agreements with such public utility to contribute toward the expense of such transfer or reconstruction, and in the event that they are unable to agree on the amount to be paid, the matter shall be referred to the Pennsylvania Public Utility Commission which shall, after hearing thereon, make a finding of the amount to be paid to such public utility by the

Commission. In case of failure of such public utility within a reasonable time, after notice so to do, to remove its facilities to such substitute right of way, the Pennsylvania Public Utility Commission shall have jurisdiction on petition of the Commission to order such transfer or reconstruction. Any party to such proceedings shall have the right of appeal from the ruling of the Pennsylvania Public Utility Commission. The Delaware River Port Authority is hereby authorized to acquire by purchase, or by the exercise of the power of eminent domain, any necessary land or right of way for the relocation of any such public utility right of way and facilities. The substitute right of way thus acquired shall be equal in estate to the original right of way acquired from the public utility, and the Commission shall deliver to the public utility a deed, duly executed and acknowledged, conveying to it an estate in the substitute right of way at least equal to that owned by the public utility in the original right of way, or if such substitute right of way is to be acquired by purchase, the Commission shall procure and deliver to the public utility a deed conveying such estate to it from the owner of the land on which such substitute right of way is located.

This sub-paragraph (b) shall have no application to the relocation of public utility facilities located in the beds of public streets, roads or highways.

(c) In addition to any other powers heretofore or hereafter granted to it, the Commission, in connection with construction or operation of any project for the effectuation of any of its purposes authorized by this article, shall have power to make reasonable regulations for the installation, construction, maintenance, repair, renewal, relocation and removal of tracks, pipes, mains, conduits, cables, wires, towers, poles or any other equipment and appliances, (in this sub-paragraph (c) called "works") located in the State of New Jersey, of any public utility as defined in section 48:2-13 of the revised statutes of New Jersey in, on, along, over or under any such project. Whenever in connection with the construction or operation of any such project, the Commission shall determine that it is necessary that any such works, which now are, or hereafter may be, located in, on, along, over or under any such

project, should be relocated in such project, or should be removed therefrom, the public utility owning or operating such works shall relocate or remove the same in accordance with the order of the Commission: Provided, however, That except in the case of the relocation or removal of such works located in, on, along, over or under public streets, roads or highways, the cost and expenses of such relocation or removal including the cost of installing such works in a new location or new locations, and the cost of any lands or any rights or interest in lands or any other rights acquired to accomplish such relocation or removal, less the cost of any lands or any rights or interests in lands or any other rights of the public utility paid to the public utility in connection with the relocation or removal of such works, shall be paid by the Commission and shall be included in the cost of such project. In case of any such relocation or removal of works as aforesaid, the public utility owning or operating the same, its successors or assigns, may maintain and operate such works with the necessary appurtenances in the new location or new locations for as long a period and upon the same terms and conditions as it had the right to maintain and operate such works in their former location.

In case of any such relocation or removal of works as aforesaid, the Commission shall own and maintain, repair and renew structures within the rights of way of railroad companies carrying any such project over railroads and the Commission shall bear the cost of maintenance, repair and renewal of structures within the rights of way of railroad companies carrying railroads over any such project, but this provision shall not relieve any railroad company from responsibility for damage caused to any authority or railroad structure by the operation of its railroad. Such approaches, curbing, sidewalk, paving, guard rails on approaches and surface paving on such projects, as shall be within the rights of way of a railroad company or companies, shall be owned and maintained, repaired and renewed by the Commission. Rails, pipes and lines shall be owned and maintained, repaired and renewed by the railroad company or companies.

(4) The power and authority granted in this article to the Commission to construct new or additional approach highways shall not be exercised unless and until the Department of Highways of the Commonwealth of Pennsylvania shall have filed with the Commission its written approval as to approach highways to be located in said Commonwealth, and the State Highway Department of the State of New Jersey shall have filed with the Commission its written approval as to approach highways to be located in said State.

(5) The effectuation of any of the purposes authorized by this article and the exercise or performance by the Commission of any of its powers or duties in connection with effectuation of any such purpose shall not be subject to any restrictions, limitations or provisions provided for or set forth in Article XII hereof. The bridge or ferries referred to in this article may be established, constructed or erected by the Commission notwithstanding the terms and provisions of any other agreement between the Commonwealth of Pennsylvania and the State of New Jersey.

(6) The Commission shall not construct or erect the bridge referred to in this article unless and until the Governor of the State of New Jersey and the Governor of the Commonwealth of Pennsylvania shall have filed with the Commission their written consents to such construction or erection.

(7) The Commission is hereby granted the following powers in addition to any other powers heretofore or hereafter granted to it:

(a) To abandon, close off, dismantle, sell or otherwise dispose of, any project or facility, or any part thereof, or any other property, which the Commission may determine to be no longer useful or necessary for public use.

(b) To effectuate any of its authorized purposes, either directly or indirectly, by or through wholly owned subsidiary corporations. Any such subsidiary corporation shall be a public corporate instrumentality of the Commonwealth of Pennsylvania and the State of New Jersey for such purposes and shall be deemed to be exercising an essential governmental function in effectuating such purposes. Any such subsidiary corporation and any of its property functions and activities

shall have such of the privileges, immunities, tax and other exemptions of the Commission and of the Commission's property, functions and activities, and such of the rights, powers and duties of the Commission, as the Commission shall determine.

(8) The power of the Commission, which is hereby confirmed, to purchase, construct, lease, finance, operate, maintain and own a terminal facility consisting, in whole or in part of a parking area or place, garage, building, improvement, structure, or other accommodation for the parking or storage of motor or other vehicles including all real or personal property necessary or desirable in connection therewith, shall, notwithstanding any other provision of this agreement, be exercised only at such place in the vicinity of, and in connection with, or as a part of, any bridge, tunnel, ferry, railroad, rapid transit system, transportation or terminal facility as the Commission may determine to be necessary or desirable".

ARTICLE XIII

As used herein, unless a different meaning clearly appears from the context:

"Port District" shall mean all the territory within the counties of Bucks, Chester, Delaware, Montgomery and Philadelphia in Pennsylvania, and all the territory within the counties of Atlantic, Burlington, Camden, Cape May, Cumberland, Glouster, Ocean and Salem in New Jersey.

"Commission" shall mean The Delaware River Port Authority and, when required by the context, the board constituting the governing body thereof in charge of its property and affairs.

"Commissioner" shall mean a member of the governing body of The Delaware River Port Authority.

"Economic development activity" or "economic development" shall mean any structure of facility or any development within the Port District in connection with manufacturing, port-oriented development, foreign trade zone site development or research, commercial, industrial or recreational purposes, or for purposes of warehousing or consumer and supporting services directly relating to any of the foregoing or to

any authority project or facility which are required for the sound economic development of the Port District.

"Terminal" shall include any marine, motor truck, motorbus, railroad and air terminal or garage, also any coal, grain and lumber terminal and any union freight and other terminals used or to be used in connection with the transportation of passengers and freight, and equipment, materials and supplies therefor.

"Transportation facility" and "facilities for transportation of passengers" shall include railroads operated by steam, electricity or other power, rapid transit lines, motor trucks, motorbuses, tunnels, bridges, airports, boats, ferries, carfloats, lighters, tugs, floating elevators, barges, scows, or harbor craft of any kind, and aircraft, and equipment, materials and supplies therefor.

"Terminal facility" shall include wharves, piers, slips, berths, ferries, docks, drydocks, ship repair yards, bulkheads, dock walls, basins, carfloats, floatbridges, dredging equipment, radio receiving and sending stations, grain or other storage elevators, warehouses, cold storage, tracks, yards, sheds, switches, connections, overhead appliances, bunker coal, oil and fresh water stations, markets, and every kind of terminal, storage or supply facility now in use, or hereafter designed for use to facilitate passenger transportation and for the handling, storage, loading or unloading of freight at terminals, and equipment, materials and supplies therefor.

"Transportation of passengers" and "passenger transportation" shall mean the transportation of passengers by railroad or other facilities.

"Rapid transit system" shall mean a transit system for the transportation of passengers, express, mail and baggage by railroad or other facilities, and equipment, materials and supplies therefor.

"Project" shall mean any improvement, betterment, facility or structure authorized by or pursuant to this compact or agreement to be constructed, erected, acquired, owned or controlled or otherwise undertaken by the commission. "Project" shall not include undertakings for purposes described in Article I, subdivisions (d), (e), (g), (h) and (i).

"Railroad" shall include railways, extensions thereof, tunnels, subways, bridges, elevated structures, tracks, poles, wires, conduits, powerhouses, substations, lines for the transmission of power, carbarns, shops, yards, sidings, turnouts, switches, stations and approaches thereto, cars and motive equipment.

"Bridge" and "tunnel" shall include such approach highways and interests in real property necessary therefor in the Commonwealth of Pennsylvania or the State of New Jersey as may be determined by the commission to be necessary to facilitate the flow of traffic in the vicinity of a bridge or tunnel or to connect a bridge or tunnel with the highway system or other traffic facilities in said Commonwealth or said State: Provided, however, That the power and authority herein granted to the commission to construct new or additional approach highways shall not be exercised unless and until the Department of Transportation of the Commonwealth of Pennsylvania shall have filed with the commission its written approval as to approach highways to be located in said Commonwealth and the State Highway Department of the State of New Jersey shall have filed with the commission its written approval as to approach highways to be located in said State.

"Facility" shall include all works, buildings, structures, property, appliances, and equipment, together with appurtenances necessary and convenient for the proper construction, equipment, maintenance and operation of a facility or facilities or any one or more of them.

"Personal property" shall include choses in action and all other property now commonly, or legally, defined as personal property, or which may hereafter be so defined.

"Lease" shall include rent or hire.

"Municipality" shall include a county, city, borough, village, township, town, public agency, public authority or political subdivision.

Words importing the singular number include the plural number and vice versa.

Wherever legislation or action by the Legislature of either signatory State is herein referred to, it shall mean an act of the Legislature duly adopted in accordance with the provisions of the Constitution of such State."

Table Of Federal Statutes And Interstate Compacts In Which Congress Enacted And/Or Approved Fixed Terms And The Provision At Issue Is Silent As To Removal

A. *Federal Statutes*

1. 2 U.S.C.A. §352 (West 1996) - Establishes appointment to the Citizens Commission on Public Service and Compensation for a term of the fiscal year.
2. 7 U.S.C.A. §5843 (West 1996) - Establishes appointment to Advisory Counsel to the National Genetics Resources Program for a term of 4 years.
3. 12 U.S.C.A. §308 (West 1989) - Establishes appointment to the position of Director of Federal Reserve Banks Program for a term of 3 years.
4. 15 U.S.C.A. §205d (West 1976) - Establishes appointment to the United States Metric Board for a term of 6 years.
5. 15 U.S.C.A. §4102 (West 1996) - Establishes appointment to the Arctic Research Commission for a term of 4 years.
6. 16 U.S.C.A. §460x-3 (West 1993) - Establishes appointment to the Sleeping Bear Dunes National Lakeshore Advisory Commission for a term of 2 years.
7. 16 U.S.C.A. §460bb-4 (West 1993) - Establishes appointment to the Golden Gate National Recreation Area Advisory Commission for a term of 5 years.
8. 16 U.S.C.A. §460cc-3 (West 1993) - Establishes appointment to the Gateway National Recreation Area Advisory Commission for a term of 2 years.
9. 16 U.S.C.A. §470i (West 1985) - Establishes appointment to the Advisory Counsel on Historic Preservation for a term of 4 years.
10. 16 U.S.C.A. §792 (West 1985) - Establishes appointment to the Federal Power Commission for a term of 5 years.
11. 16 U.S.C.A. §831 (West 1985) - Establishes appointment to the Tennessee Valley Authority for a term of 9 years.
12. 18 U.S.C.A. §4351 (West 1985) - Establishes appointment to the Advisory Board of the National Institute for Corrections for a term of 3 years.

13. 20 U.S.C.A. §43 (West 1990) - Establishes appointment to the Board of Regents of the Smithsonian Institution for a term of 6 years.
14. 20 U.S.C.A. §76cc (West 1990) - Establishes appointment to the Board of Trustees of the Smithsonian Institution for a term of 6 years.
15. 20 U.S.C.A. §80 (West 1990) - Establishes appointment to the National Armed Forces Museum Advisory Board for a term of 6 years.
16. 20 U.S.C.A. §80n (West 1990) - Establishes appointment to the Commission for the Museum of African Art for a term of 3 years.
17. 20 U.S.C.A. §963 (West 1990) - Establishes appointment to the National Museum Service Board for a term of 5 years.
18. 20 U.S.C.A. §1132c-6 (West 1996) - Establishes appointment to the Historically Black College and University Capital Financing Advisory Board for a term of 3 years.
19. 20 U.S.C.A. §1505 (West 1996) - Establishes appointment to the National Commission on Libraries and Information Science for a term of 5 years.
20. 20 U.S.C.A. §2103 (West 1990) - Establishes appointment to the Board of Trustees of the Folk Life Center for a term of 6 years.
21. 22 U.S.C.A. §283a (West 1990) - Establishes appointment of Governor and Alternate Governor to the Inter-American Development Bank for a term of 5 years.
22. 22 U.S.C.A. §283a (West 1990) - Establishes appointment of Executive Director to the Inter-American Development Bank for a term of 3 years.
23. 22 U.S.C.A. §286a (West 1990) - Establishes appointment of Governor to the International Monetary Fund and Bank for Reconstruction and Development for a term of 5 years.
24. 22 U.S.C.A. §286a (West 1990) - Establishes appointment of Executive Director to the International Monetary Fund and Bank for Reconstruction and Development for a term of 2 years.

25. 22 U.S.C.A. §2124b (West 1996) - Establishes appointment to the Travel and Tourism Advisory Board for a term of 3 years.
26. 23 U.S.C.A. §404 (West 1990) - Establishes appointment to the National Highway Safety Advisory Committee for a term of 3 years.
27. 29 U.S.C.A. §175 (West 1990) - Establishes appointment to the National Labor Management Panel for a term of 3 years.
28. 33 U.S.C.A. §857-14 (West 1990) - Establishes appointment to the National Advisory Committee on Oceans and Atmosphere for a term of 3 years.
29. 33 U.S.C.A. §1128 (West 1996) - Establishes appointment to the Sea Grant Review Panel for a term of 3 years.
30. 33 U.S.C.A. §1363 (West 1990) - Establishes appointment to the Water Pollution Control Advisory Board for a term of 3 years.
31. 40 U.S.C.A. §162-1 (West 1996) - Establishes appointment of the Architect of Capitol for a term of 10 years.
32. 42 U.S.C.A. §205 (West 1991) - Establishes appointment to the Office of Surgeon General for a term of 4 years.
33. 42 U.S.C.A. §285q-2 (West 1996) - Establishes appointment to the Advisory Counsel for the National Institute of Nursing Research for a term of 4 years.
34. 42 U.S.C.A. §286a (West 1996) - Establishes appointment to the Board of Regents for the National Library of Medicine for a term of 4 years.
35. 42 U.S.C.A. §287a (West 1996) - Establishes appointment to the Advisory Counsel to the National Center for Research Resources for a term of 4 years.
36. 42 U.S.C.A. §290b (West 1996) - Establishes appointment to the Board of Directors of the National Foundation for Biomedical Research for a term of 5 years.
37. 42 U.S.C.A. §290aa-1 (West 1996) - Establishes appointment to the Advisory Councils for the Substance and Mental Health Services Administration for a term of 4 years.
38. 42 U.S.C.A. §291k (West 1991) - Establishes appointment to the Federal Hospital Council for a term of 4 years.

39. 42 U.S.C.A. §300aa-19 (West 1991) - Establishes appointment to the Advisory Commission on Childhood Vaccines for a term of 3 years.
40. 42 U.S.C.A. §903 (West 1996) - Establishes appointment to the Social Security Advisory Board for a term of 6 years.
41. 42 U.S.C.A. §2000g (West 1994) - Establishes appointment to the Establishment of a Director of Service to the Community Relations Service for a term of 4 years.
42. 42 U.S.C.A. §2477 (West 1994) - Establishes appointment to the Aerospace Safety Advisory Panel for a term of 6 years.
43. 42 U.S.C.A. §3934 (West 1994) - Establishes appointment to the Board of Directors for the National Housing Partnerships for a term of 3 years.
44. 43 U.S.C.A. §364a (West 1986) - Establishes appointment to the Board on Geographic Names for a term of 2 years.
45. 44 U.S.C.A. §2501 (West 1991) - Establishes appointment to the National Historical Publications and Records Commission for a term of 4 years.
46. 94 U.S.C.A. §726 (West 1997) - Establishes appointment to the Railroad-Shipper Transportation Advisory Council for a term of 3 years.

B. ***Interstate Compacts***

47. Ameraport Deep Draft Harbor And Terminal Compact - Ala. Code § 33-9-2 (1996) - Commissioners appointed to the Ameraport Deep Draft Harbor And Terminal Authority for terms of four years.
48. Appalachian States Low-Level Radioactive Waste Compact - Del. Code Ann. tit. 7, § 8002 (1996) - Commissioners appointed to the Appalachian States Low-Level Radioactive Waste Commission for terms of 4 years.
49. Arkansas River Basin Compact - Ark. Code Ann. § 15-23-401 (Michie 1995) - Commissioners appointed to the Arkansas-Oklahoma Arkansas River Compact Commission for terms of four years.

50. Arkansas River Basin Compact, Kansas-Oklahoma - Kan. Stat. Ann. §82a-528 (1995) - Commissioners appointed to the Kansas-Oklahoma Arkansas River Commission for terms of four years.
51. California-Nevada Interstate Compact - Cal. Water Code §5976 (West 1997) - Members appointed to the California-Nevada Compact Commission for terms of four years.
52. Chickasaw Trail Economic Development Compact - Miss. Code Ann. § 57-36-1 (1996) - Commissioners appointed to the Chickasaw Trail Economic Development Authority for a term of four years.
53. Compact For Development Of Deep Draft Harbor And Terminal - Miss. Code Ann. § 59-6-5 (1996) - Commissioners appointed to the Gulf Coast Superport Development Authority Commission for terms of four years.
54. Connecticut River Atlantic Salmon Compact - N.H. Rev. Stat. Ann. § 213-A:1 (1995) - Commissioners appointed to the Connecticut River Atlantic Salmon Commission for terms of three years.
55. Connecticut River Valley Flood Control Compact - Conn. Gen. Stat. Ann. § 25- 100 (West 1990) - Commissioners appointed to the Connecticut River Valley Flood Control Commission for terms of six years.
56. Falls Of The Ohio Interstate Park Compact - Ky. Rev. Stat. Ann. § 148.241 (Baldwin 1996) - Commissioners appointed to the Falls Of The Ohio Interstate Park Commission for terms of four years.
57. Gulf States Marine Fisheries Compact - Miss. Code Ann. §49-15-101 (1991) - Commissioners appointed to Gulf States Marine Fisheries Commission for terms of six years.
58. Kansas-Nebraska Big Blue River Basin Compact - Kan. Stat. Ann. §82a-529 (1995) - Advisory members appointed to the Kansas-Nebraska Big Blue River Compact Administration for terms of four years.
59. Mississippi-Alabama Railroad Authority Compact - Miss. Code Ann. § 77-9-531 (1996) - Commissioners appointed to the Mississippi-Alabama Railroad Authority for terms of four years.

60. Mississippi-Louisiana-Alabama-Georgia Rapid Rail Transit Compact - Ga. Code Ann. § 46-9-300 (Michie 1996) - Commissioners appointed to the Mississippi-Louisiana-Alabama-Georgia Rapid Rail Transit Commission for terms of four years.
61. Mississippi-Louisiana Bridge Construction Compact - La. Rev. Stat. Ann. § 48:1107 (West 1996) - Commissioners appointed to the Mississippi-Louisiana Bridge Authority for terms of four years.
62. New England Higher Education Compact - Conn. Gen. Stat. Ann. § 10a-62 (West 1996) - Members appointed to the New England Higher Education Board for terms of six years.
63. Ocean State Compact - R.I. Gen. Laws § 42-111-1 (1995) - Commissioners appointed to the Ocean State Commission for terms of two years.
64. Potomac River Compact of 1958 - Va. Code Ann. §28.2-1001 (Michie 1996) - Commissioners appointed to the Potomac River Fisheries Commission for terms of four years.
65. Rhode Island Interstate Environmental Control Compact - Mass. Gen. Laws Ann. ch. 21, § 2-3 (West 1994) - Commissioners appointed to the Rhode Island Interstate Environmental Control Commission for terms of two years.
66. Sabine River Compact - La. Rev. Stat. Ann. §2329 (West 1995) - Louisiana members of the Sabine River Compact Administration appointed for terms of four years; Texas members appointed for terms of six years.
67. Southern Growth Policies Agreement - Ark. Code Ann. § 15-2-101 (Michie 1995) - Commissioners appointed to the Southern Growth Policies Board for terms of two years.
68. Southern Regional Education Compact - Ark. Code Ann. § 6-4-101 (Michie 1995) - Commissioners appointed to Southern Regional Education Board for terms of four years.

69. Tahoe Conservancy Agency Compact - Cal. Gov't Code §66901 (West 1996) - Members appointed to the governing body of the Tahoe Conservancy Agency for terms of four years.
70. Thames River Valley Flood Control Compact - Conn. Gen. Stat. Ann. § 25-102 (West 1990) - Commissioners appointed to the Thames River Valley Flood Control Commission for terms of six years.
71. Tombigee-Tennessee Waterway Development Compact - Ala. Code § 33-8-1 (1996) - Commissioners appointed to the Tombigee-Tennessee Waterway Development Authority for terms of four years.
72. Western Regional Education Compact - Haw. Rev. Stat. § 310-2 (1996) - Commissioners appointed to the Western Interstate Commission For Higher Education for terms of four years.